

**ARTICLE XVI. ELECTRIC SERVICE CUSTOMER CHOICE AND
RATE RELIEF LAW OF 1997**

(220 ILCS 5/16-101 new)

Sec. 16-101. Short title and applicability.

(a) This Article may be cited as the Electric Service Customer Choice and Rate Relief Law of 1997 and shall apply to electric utilities and alternative retail electric suppliers as defined in this Article. Except to the extent modified or supplemented by the provisions of this Article, or where the context clearly renders such provisions inapplicable, the other Articles of the Public Utilities Act pertaining to public utilities, public utility rates and services and the regulation thereof, are fully and equally applicable to the tariffed services electric utilities provide.

(b) The provisions of subsections (a) through (h) of Section 16-111 of this Act shall not be applicable to any electric utility which elects to file biennial rate proceedings before the Commission in the years 1998, 2000 and 2002. An electric utility electing this option shall do so by filing a notice of such election with the Commission within 60 days after the effective date of this amendatory Act of 1997, or its right to make such election shall be irrevocably waived. An electric utility electing the option specified in this paragraph shall file its rate proceeding with the Commission no later than August 1 of the years 1998, 2000, 2002. The electric utility's filing shall comply with all requirements of 83 Illinois Administrative Code Parts 255 and 285 as though the electric utility were filing for an increase in its rates, without regard to whether such filing would produce an increase, a decrease or no change in the electric utility's rates and the Commission shall review the electric utility's filing and shall issue its order in accordance with the provisions of Section 9-201 of this Act.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-101A new)

Sec. 16-101A. Legislative findings.

(a) The citizens and businesses of the State of Illinois have been well-served by a comprehensive electrical utility system which has provided safe, reliable, and affordable service. The electrical utility system in the State of Illinois has historically been subject to State and federal regulation, aimed at assuring the citizens and businesses of the State of safe, reliable, and affordable service, while at the same time assuring the utility system of a return on its investment.

(b) Competitive forces are affecting the market for electricity as a result of recent federal regulatory and statutory changes and the activities of other states. Competition in the electric services market may create opportunities for new products and services for customers and lower costs for users of electricity. Long-standing regulatory relationships need to be altered to accommodate the competition that could fundamentally alter the structure of the electric services market.

(c) With the advent of increasing competition in this industry, the State has a continued interest in assuring that the safety, reliability, and affordability of electrical power is not sacrificed to competitive pressures, and to that end, intends to implement safeguards to assure that the industry continues to operate the electrical system in a manner that will serve the public's interest. Under the existing regulatory framework, the industry has been encouraged to undertake certain investments in its physical plant and personnel to enhance its efficient operation, the cost of which it has been permitted to pass on to consumers. The State has an interest in providing the existing utilities a reasonable opportunity to obtain a return on certain investments on which they depended in undertaking those commitments in the first instance while, at the same time, not permitting new entrants into the industry to take unreasonable advantage of the investments made by the formerly regulated industry.

(d) A competitive wholesale and retail market must benefit all Illinois citizens. The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers. Consumer protections must be in place to ensure that all customers continue to receive safe, reliable, affordable, and environmentally safe electric service.

(e) All consumers must benefit in an equitable and timely fashion from the lower costs for electricity that result from retail and wholesale competition and receive sufficient information to make informed choices among suppliers and services. The use of renewable resources and energy efficiency resources should be encouraged in competitive markets.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-102 new)

Sec. 16-102. Definitions. For the purposes of this Article the following terms shall be defined as set forth in this Section.

"Alternative retail electric supplier" means every person, cooperative, corporation, municipal corporation, company, association, joint stock company or association, firm, partnership, individual, or other entity, their lessees, trustees, or receivers appointed by any court whatsoever, that offers electric power or energy for sale, lease or in exchange for other value received to one or more retail customers, or that engages in the delivery or furnishing of electric power or energy to such retail customers, and shall include, without limitation, resellers, aggregators and power marketers, but shall

not include (i) electric utilities (or any agent of the electric utility to the extent the electric utility provides tariffed services to retail customers through that agent), (ii) any electric cooperative or municipal system as defined in Section 17-100 to the extent that the electric cooperative or municipal system is serving retail customers within any area in which it is or would be entitled to provide service under the law in

effect immediately prior to the effective date of this amendatory Act of 1997, (iii) a public utility that is owned and operated by any public institution of higher education of this State, or a public utility that is owned by such public institution of higher education and operated by any of its lessees or operating agents, within any area in which it is or would be entitled to provide service under the law in effect immediately prior to the effective date of this amendatory Act of 1997, (iv) any retail customer to the extent that customer obtains its electric power and energy from its own cogeneration or self-generation facilities, (v) any entity that sells or arranges for the installation of cogeneration or self-generation facilities to be owned by a retail customer described in subparagraph (iv), but only to the extent the entity is engaged in selling or arranging for such installation, or (vi) an industrial or manufacturing customer that owns its own distribution facilities, to the extent that the customer provides service from that distribution system to a third-party contractor located on the customer's premises that is integrally and predominantly engaged in the customer's industrial or manufacturing process; provided, that if the industrial or manufacturing customer has elected delivery services, the customer shall pay transition charges applicable to the electric power and energy consumed by the third-party contractor unless such charges are otherwise paid by the third party contractor, which shall be calculated based on the usage of, and the base rates or the contract rates applicable to, the third-party contractor in accordance with Section 16-102.

"Base rates" means the rates for those tariffed services that the electric utility is required to offer pursuant to subsection (a) of Section 16-103 and that were identified in a rate order for collection of the electric utility's base rate revenue requirement, excluding (i) separate automatic rate adjustment riders then in effect, (ii) special or negotiated contract rates, (iii) delivery services tariffs filed pursuant to Section 16-108, (iv) real-time pricing, or (v) tariffs that were in effect prior to October 1, 1996 and that based charges for services on an index or average of other utilities' charges, but including (vi) any subsequent redesign of such rates for tariffed services that is authorized by the Commission after notice and hearing.

"Competitive service" includes (i) any service that has been declared to be competitive pursuant to Section 16-113 of this Act, (ii) contract service, and (iii) services, other than tariffed services, that are related to, but not necessary for, the provision of electric power and energy or delivery services.

"Contract service" means (1) services, including the provision of electric power and energy or other services, that are provided by mutual agreement between an electric utility and a retail customer that is located in the electric utility's service area, provided that, delivery services shall not be a contract service until such services are declared competitive pursuant to Section 16-113; and also means (2) the provision of electric power and energy by an electric utility to retail customers outside the electric utility's service area pursuant to Section 16-116. Provided, however, contract service does not include electric utility services provided pursuant to (i) contracts that retail customers are required to execute as a condition of receiving tariffed services, or (ii) special or negotiated rate contracts for electric utility services that were entered into

between an electric utility and a retail customer prior to the effective date of this amendatory Act of 1997 and filed with the Commission. "Delivery services" means those services provided by the electric utility that are necessary in order for the transmission

and distribution systems to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services.

"Delivery services" means those services provided by the electric utility that are necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and shall include, without limitation, standard metering and billing services.

"Electric utility" means a public utility, as defined in Section 3-105 of this Act, that has a franchise, license, permit or right to furnish or sell electricity to retail customers within a service area.

"Mandatory transition period" means the period from the effective date of this amendatory Act of 1997 through January 1, 2005.

"Municipal system" shall have the meaning set forth in Section 17-100.

"Real-time pricing" means charges for delivered electric power and energy that vary on an hour-to-hour basis for nonresidential retail customers and that vary on a periodic basis during the day for residential retail customers.

"Retail customer" means a single entity using electric power or energy at a single premises and that (A) either (i) is receiving or is eligible to receive tariffed services from an electric utility, or (ii) that is served by a municipal system or electric cooperative within any area in which the municipal system or electric cooperative is or would be entitled to provide service under the law in effect immediately prior to the effective date of this amendatory Act of 1997, or (B) an entity which on the effective date of this Act was receiving electric service from a public utility and (i) was engaged in the practice of resale and redistribution of such electricity within a building prior to January 2, 1957, or (ii) was providing lighting services to tenants in a multi-occupancy building, but only to the extent such resale, redistribution or lighting service is authorized by the electric utility's tariffs that were on file with the Commission on the effective date of this Act.

"Service area" means (i) the geographic area within which an electric utility was lawfully entitled to provide electric power and energy to retail customers as of the effective date of this amendatory Act of 1997, and includes (ii) the location of any retail customer to which the electric utility was lawfully providing electric utility services on such effective date.

"Small commercial retail customer" means those nonresidential retail customers of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area.

"Tariffed service" means services provided to retail customers by an electric utility as defined by its rates on file with the Commission pursuant to the provisions of Article IX of this Act, but shall not include competitive services.

"Transition charge" means a charge expressed in cents per kilowatt-hour that is calculated for a customer or class of customers as follows for each year in which an electric utility is entitled to recover transition charges as provided in Section 16-108:

(1) the amount of revenue that an electric utility would receive from the retail customer or customers if it were serving such customers' electric power and energy requirements as a tariffed service based on (A) all of the customers' actual usage during the 3 years ending 90 days prior to the date on which such customers were first eligible for delivery services pursuant to Section 16-104, and (B) on (i) the base rates in effect on October 1, 1996 (adjusted for the reductions required by subsection (b) of Section 16-111, for any reduction resulting from a rate decrease under Section 16-101(b), for any restatement of base rates made in conjunction with an elimination of the fuel adjustment clause pursuant to subsection (b), (d), or (f) of Section 9-220 and for any removal of decommissioning costs from base rates pursuant to Section 16-114) and any separate automatic rate adjustment riders (other than a decommissioning rate as defined in Section 16-114) under which the customers were receiving or, had they been customers, would have received electric power and energy from the electric utility during the year immediately preceding the date on which such customers were first eligible for delivery service pursuant to Section 16-104, or (ii) to the extent applicable, any contract rates, including contracts or rates for consolidated or aggregated billing, under which such customers were receiving electric power and energy from the electric utility during such year;

(2) less the amount of revenue, other than revenue from transition charges and decommissioning rates, that the electric utility would receive from such retail customers for delivery services provided by the electric utility, assuming such customers were taking delivery services for all of their usage, based on the delivery services tariffs in effect during the year for which the transition charge is being calculated and on the usage identified in paragraph (1);

(3) less the market value for the electric power and energy that the electric utility would have used to supply all of such customers' electric power and energy requirements, as a tariffed service, based on the usage identified in paragraph (1), with such market value determined in accordance with Section 16-112 of this Act;

(4) less the following amount which represents the amount to be attributed to new revenue sources and cost reductions by the electric utility through the end of the period for which transition costs are recovered pursuant to Section 16-108, referred to in this Article XVI as a "mitigation factor":

(A) for nonresidential retail customers, an amount equal to the greater of (i) 0.5 cents per kilowatt-hour during the period October 1, 1999 through December 31, 2004, 0.6 cents per kilowatt-hour in calendar year 2005, and 0.9 cents per kilowatt-hour in calendar year 2006, multiplied in

each year by the usage identified in paragraph (1), or (ii) an amount equal to the following percentages of the amount produced by applying the applicable base rates (adjusted as described in subparagraph (1)(B)) or contract rate to the usage identified in paragraph (1): 8% for the period

October 1, 1999 through December 31, 2002, 10% in calendar years 2003 and 2004, 11% in calendar year 2005 and 12% in calendar year 2006; and

(B) for residential retail customers, an amount equal to the following percentages of the amount produced by applying the base rates in effect on October 1, 1996 (adjusted as described in subparagraph (1)(B)) to the usage identified in paragraph (1): (i) 6% from May 1, 2002 through December 31, 2002, (ii) 7% in calendar years 2003 and 2004, (iii) 8% in calendar year 2005, and (iv) 10% in calendar year 2006;

(5) divided by the usage of such customers identified in paragraph (1), provided that the transition charge shall never be less than zero.

"Unbundled service" means a component or constituent part of a tariffed service which the electric utility subsequently offers separately to its customers.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-103 new)

Sec. 16-103. Service obligations of electric utilities.

(a) An electric utility shall continue offering to retail customers each tariffed service that it offered as a distinct and identifiable service on the effective date of this amendatory Act of 1997 until the service is (i) declared competitive pursuant to Section 16-113, or (ii) abandoned pursuant to Section 8-508. Nothing in this subsection shall be construed as limiting an electric utility's right to propose, or the Commission's power to approve, allow or order modifications in the rates, terms and conditions for such services pursuant to Article IX or Section 16-111 of this Act.

(b) An electric utility shall also offer, as tariffed services, delivery services in accordance with this Article, the power purchase options described in Section 16-110 and real-time pricing as provided in Section 16-107.

(c) Notwithstanding any other provision of this Article, each electric utility shall continue offering to all residential customers and to all small commercial retail customers in its service area, as a tariffed service, bundled electric power and energy delivered to the customer's premises consistent with the bundled utility service provided by the electric utility on the effective date of this amendatory Act of 1997. Upon declaration of the provision of electric power and energy as competitive, the electric utility shall continue to offer to such customers, as a tariffed service, bundled service options at rates which reflect recovery of all cost components for providing the service. For those components of the service which have been declared competitive, cost shall be the market based prices. Market based prices as referred to herein shall mean, for electric power and energy, either (i) those prices for electric power and energy determined as provided in Section 16-112, or (ii) the electric utility's cost of obtaining the

electric power and energy at wholesale through a competitive bidding or other arms-length acquisition process.

(d) Any residential or small commercial retail customer which elects delivery services is entitled to return to the electric utility's bundled utility tariffed service offering provided in accordance with subsection (c) of this Section upon payment of a reasonable administrative fee which shall be set forth in the tariff, provided, however, that the electric utility shall be entitled to impose the condition that such customer may not elect delivery services for up to 24 months thereafter.

(e) The Commission shall not require an electric utility to offer any tariffed service other than the services required by this Section, and shall not require an electric utility to offer any competitive service.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-104 new)

Sec. 16-104. Delivery services transition plan. An electric utility shall provide delivery services to retail customers in accordance with the provisions of this Section.

(a) Each electric utility shall offer delivery services to retail customers located in its service area in accordance with the following provisions:

(1) On or before October 1, 1999, the electric utility shall offer delivery services (i) to any non-residential retail customer whose average monthly maximum electrical demand on the electric utility's system during the 6 months with the customer's highest monthly maximum demands in the 12 months ending June 30, 1999 equals or exceeds 4 megawatts; (ii) to any non-governmental, non-residential, commercial retail customers under common ownership doing business at 10 or more separate locations within the electric utility's service area, if the aggregate coincident average monthly maximum electrical demand of all such locations during the 6 months with the customer's highest monthly maximum electrical demands during the 12 months ending June 30, 1999 equals or exceeds 9.5 megawatts, provided, however, that an electric utility's obligation to offer delivery services under this clause (ii) shall not exceed 3.5% of the maximum electric demand on the electric utility's system in the 12 months ending June 30, 1999; and (iii) to non-residential retail customers whose annual electric energy use comprises 33% of the kilowatt-hour sales, excluding the kilowatt-hour sales to customers described in clauses (i) and (ii), to each non-residential retail customer class of the electric utility.

(2) On or before October 1, 2000, the electric utility shall offer delivery services to the eligible governmental customers described in subsections (a) and (b) of Section 16-125A if the aggregate coincident average monthly maximum electrical demand of such customers during the 6 months with the customers' highest monthly maximum electrical demands during the 12 months ending June 30, 2000 equals or exceeds 9.5 megawatts.

(3) On or before December 31, 2000, the electric utility shall offer delivery services to all remaining nonresidential retail customers in its service area.

(4) On or before May 1, 2002, the electric utility shall offer delivery services to all residential retail customers in its service area.

The loads and kilowatt-hour sales used for purposes of this subsection shall be those for the 12 months ending June 30, 1999 for nonresidential retail customers. The electric utility shall identify those customers to be offered delivery service pursuant to clause (1)(iii) pursuant to a lottery or other random non-discriminatory selection process set forth in the electric utility's delivery services implementation plan pursuant to Section 16-105. Provided, that non-residential retail customers under common ownership at separate locations within the electric utility's service area may elect, prior to the date the electric utility conducts the lottery or other random selection process for purposes of clause (1)(iii), to designate themselves as a common ownership group, to be excluded from such lottery and to instead participate in a separate lottery for such common ownership group pursuant to which delivery services will be offered to non-residential retail customers comprising 33% of the total kilowatt-hour sales to the common ownership group on or before October 1, 1999. For purposes of this subsection (a), an electric utility may define "common ownership" to exclude sites which are not part of the same business, provided, that auxiliary establishments as defined in the Standard Industrial Classification Manual published by the United States Office of Management and Budget shall not be excluded.

(b) The electric utility shall allow the aggregation of loads that are eligible for delivery services so long as such aggregation meets the criteria for delivery of electric power and energy applicable to the electric utility established by the regional reliability council to which the electric utility belongs, by an independent system operating organization to which the electric utility belongs, or by another organization responsible for overseeing the integrity and reliability of the transmission system, as such criteria are in effect from time to time. The Commission may adopt rules and regulations governing the criteria for aggregation of the loads utilizing delivery services, but its failure to do so shall not preclude any eligible customer from electing delivery services. The electric utility shall allow such aggregation for any voluntary grouping of customers, including without limitation those having a common agent with contractual authority to purchase electric power and energy and delivery services on behalf of all customers in the grouping.

(c) An electric utility shall allow a retail customer that generates power for its own use to include the electrical demand obtained from the customer's cogeneration or self-generation facilities that is coincident with the retail customer's maximum monthly electrical demand on the electric utility's system in any determination of the customer's maximum monthly electrical demand for purposes of determining when such retail customer shall be offered delivery services pursuant to clause (i) of subparagraph (1) of subsection (a) of this Section.

(d) The Commission shall establish charges, terms and conditions for delivery services in accordance with Section 16-108.

(e) Subject to the terms and conditions which the electric utility is entitled to impose in accordance with Section 16-108, a retail customer that is eligible to elect delivery services pursuant to subsection (a) may place all or a portion of its electric power and energy requirements on delivery services.

(f) An electric utility may require a retail customer who elects to (i) use an alternative retail electric supplier or another electric utility for some but not all of its electric power or energy requirements, and (ii) use the electric utility for any portion of its remaining electric power and energy requirements, to place the portion of the customer's electric power or energy requirement that is to be served by the electric utility on a tariff containing charges that are set to recover the lowest reasonably available cost to the electric utility of acquiring electric power and energy on the wholesale electric market to serve such remaining portion of the customer's electric power and energy requirement, reasonable compensation for arranging for and providing such electric power or energy, and the electric utility's other costs of providing service to such remaining electric power and energy requirement.

((Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-105 new)

Sec. 16-105. Delivery services implementation plan. To ensure the safe and orderly implementation of delivery services, each electric utility shall submit to the Commission no later than March 1, 1999, a delivery services implementation plan for non-residential customers and no later than August 1, 2001, a delivery services implementation plan for residential customers. The delivery services implementation plan shall detail the process and procedures by which each electric utility will offer delivery services to each customer class and shall be designed to insure an orderly transition and the maintenance of reliable service. The Commission shall enter an order approving, or approving as modified, the delivery services implementation plan of each electric utility no later than 60 days prior to the date on which the electric utility must commence offering such services.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-106 new)

Sec. 16-106. Billing experiments. During the mandatory transition period, an electric utility may at its discretion conduct one or more experiments for the provision or billing of services on a consolidated or aggregated basis, for the provision of real-time pricing, or other billing or pricing experiments, and may include experimental programs offered to groups of retail customers possessing common attributes as defined by the electric utility, such as the members of an organization that was established to serve a well-defined industry group, companies having multiple sites, or closely-located or affiliated buildings, provided that such groups exist for a purpose other than obtaining energy services and have been in existence for at least 10 years. The offering of such a program by an electric utility to retail customers participating in the program, and the participation by those customers in the program, shall not create any right in any other retail customer or group of customers to participate in the same or a similar program. The Commission shall allow such experiments to go into effect upon the filing by the electric utility of a statement describing the program. Nothing contained in this Section

shall be deemed to prohibit the electric utility from offering, or the Commission from approving, experimental rates, tariffs and services in addition to those allowed under

this Section. The Commission shall review and report annually the progress, participation and effects of such experiments to the General Assembly. Based upon its review, recommendations for modification of such experiments may be made by the Commission to the Illinois General Assembly.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-107 new)

Sec. 16-107. Real-time pricing.

(a) Each electric utility shall file, on or before May 1, 1998, a tariff or tariffs which allow nonresidential retail customers in the electric utility's service area to elect real-time pricing beginning October 1, 1998.

(b) Each electric utility shall file, on or before May 1, 2000, a tariff or tariffs which allow residential retail customers in the electric utility's service area to elect real-time pricing beginning October 1, 2000.

(c) The electric utility's tariff or tariffs filed pursuant to this Section shall be subject to Article IX.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-108 new)

Sec. 16-108. Recovery of costs associated with the provision of delivery services.

(a) An electric utility shall file a delivery services tariff with the Commission at least 210 days prior to the date that it is required to begin offering such services pursuant to this Act. An electric utility shall provide the components of delivery services that are subject to the jurisdiction of the Federal Energy Regulatory Commission at the same prices, terms and conditions set forth in its applicable tariff as approved or allowed into effect by that Commission. The Commission shall otherwise have the authority pursuant to Article IX to review, approve, and modify the prices, terms and conditions of those components of delivery services not subject to the jurisdiction of the Federal Energy Regulatory Commission, including the authority to determine the extent to which such delivery services should be offered on an unbundled basis. In making any such determination the Commission shall consider, at a minimum, the effect of additional unbundling on (i) the objective of just and reasonable rates, (ii) electric utility employees, and (iii) the development of competitive markets for electric energy services in Illinois.

(b) The Commission shall enter an order approving, or approving as modified, the delivery services tariff no later than 30 days prior to the date on which the electric

utility must commence offering such services. The Commission may subsequently modify such tariff pursuant to this Act.

(c) The electric utility's tariffs shall define the classes of its customers for purposes of delivery services charges. Delivery services shall be priced and made available to all retail customers electing delivery services in each such class on a non-discriminatory basis regardless of whether the retail customer chooses the electric utility, an affiliate of the electric utility, or another entity as its supplier of electric power and energy. Charges for delivery services shall be cost based, and shall allow the electric utility to recover the costs of providing delivery services through its charges to its delivery service customers that use the facilities and services associated with such costs. Such costs shall include the costs of owning, operating and maintaining transmission and distribution facilities. The Commission shall also be authorized to consider whether, and if so to what extent, the following costs are appropriately included in the electric utility's delivery services rates: (i) the costs of that portion of generation facilities used for the production and absorption of reactive power in order that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility, and (ii) the costs associated with the use and redispatch of generation facilities to mitigate constraints on the transmission or distribution system in order that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility. Nothing in this subsection shall be construed as directing the Commission to allocate any of the costs described in (i) or (ii) that are found to be appropriately included in the electric utility's delivery services rates to any particular customer group or geographic area in setting delivery services rates.

(d) The Commission shall establish charges, terms and conditions for delivery services that are just and reasonable and shall take into account customer impacts when establishing such charges. In establishing charges, terms and conditions for delivery services, the Commission shall take into account voltage level differences. A retail customer shall have the option to request to purchase electric service at any delivery service voltage reasonably and technically feasible from the electric facilities serving that customer's premises provided that there are no significant adverse impacts upon system reliability or system efficiency. A retail customer shall also have the option to request to purchase electric service at any point of delivery that is reasonably and technically feasible provided that there are no significant adverse impacts on system reliability or efficiency. Such requests shall not be unreasonably denied.

(e) Electric utilities shall recover the costs of installing, operating or maintaining facilities for the particular benefit of one or more delivery services customers, including without limitation any costs incurred in complying with a customer's request to be served at a different voltage level, directly from the retail customer or customers for whose benefit the costs were incurred, to the extent such costs are not recovered through the charges referred to in subsections (c) and (d) of this Section.

(f) An electric utility shall be entitled but not required to implement transition charges in conjunction with the offering of delivery services pursuant to Section 16-104. If an electric utility implements transition charges, it shall implement such charges for all delivery services customers and for all customers described in subsection (h). Such

charges shall be calculated as provided in Section 16-102, and shall be collected on each kilowatt-hour delivered under a delivery services tariff to a retail customer from the date the customer first takes delivery services until December 31, 2006 except as provided in subsection (h) of this Section. Provided, however, that an electric utility

shall be entitled to petition for entry of an order by the Commission authorizing the electric utility to implement transition charges for an additional period ending no later than December 31, 2008. The electric utility shall file its petition with supporting evidence no earlier than 16 months, and no later than 12 months, prior to December 31, 2006. The Commission shall hold a hearing on the electric utility's petition and shall enter its order no later than 8 months after the petition is filed. The Commission shall determine whether and to what extent the electric utility shall be authorized to implement transition charges for an additional period. The Commission may authorize the electric utility to implement transition charges for some or all of the additional period, and shall determine the mitigation factors to be used in implementing such transition charges; provided, that the Commission shall not authorize mitigation factors less than 110% of those in effect during the 12 months ended December 31, 2006. In making its determination, the Commission shall consider the following factors: the necessity to implement transition charges for an additional period in order to maintain the financial integrity of the electric utility; the prudence of the electric utility's actions in reducing its costs since the effective date of this amendatory Act of 1997; the ability of the electric utility to provide safe, adequate and reliable service to retail customers in its service area; and the impact on competition of allowing the electric utility to implement transition charges for the additional period.

(g) The electric utility shall file tariffs that establish the transition charges to be paid by each class of customers to the electric utility in conjunction with the provision of delivery services. The electric utility's tariffs shall define the classes of its customers for purposes of calculating transition charges. The electric utility's tariffs shall provide for the calculation of transition charges on a customer-specific basis for any retail customer whose average monthly maximum electrical demand on the electric utility's system during the 6 months with the customer's highest monthly maximum electrical demands equals or exceeds 3.0 megawatts for electric utilities having more than 1,000,000 customers, and for other electric utilities for any customer that has an average monthly maximum electrical demand on the electric utility's system of one megawatt or more, and (A) for which there exists data on the customer's usage during the 3 years preceding the date that the customer became eligible to take delivery services, or (B) for which there does not exist data on the customer's usage during the 3 years preceding the date that the customer became eligible to take delivery services, if in the electric utility's reasonable judgment there exists comparable usage information or a sufficient basis to develop such information, and further provided that the electric utility can require customers for which an individual calculation is made to sign contracts that set forth the transition charges to be paid by the customer to the electric utility pursuant to the tariff.

(h) An electric utility shall also be entitled to file tariffs that allow it to collect transition charges from retail customers in the electric utility's service area that do not take delivery services but that take electric power or energy from an alternative retail electric supplier or from an electric utility other than the electric utility in whose service area the customer is located. Such charges shall be calculated, in accordance with the definition of transition charges in Section 16-102, for the period of time that the cus-

customer would be obligated to pay transition charges if it were taking delivery services, except that no deduction for delivery services revenues shall be made in such calculation, and usage data from the customer's class shall be used where historical usage data is not available for the individual customer. The customer shall be obligated to pay such charges on a lump sum basis on or before the date on which the customer

commences to take service from the alternative retail electric supplier or other electric utility, provided, that the electric utility in whose service area the customer is located shall offer the customer the option of signing a contract pursuant to which the customer pays such charges ratably over the period in which the charges would otherwise have applied.

(i) An electric utility shall be entitled to add to the bills of delivery services customers charges pursuant to Sections 9-221, 9-222 (except as provided in Section 9-222.1), and Section 16-114 of this Act, Section 5-5 of the Electricity Infrastructure Maintenance Fee Law, Section 6-5 of the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997, and Section 13 of the Energy Assistance Act of 1989.

(j) If a retail customer that obtains electric power and energy from cogeneration or self-generation facilities installed for its own use on or before January 1, 1997, subsequently takes service from an alternative retail electric supplier or an electric utility other than the electric utility in whose service area the customer is located for any portion of the customer's electric power and energy requirements formerly obtained from those facilities (including that amount purchased from the utility in lieu of such generation and not as standby power purchases, under a cogeneration displacement tariff in effect as of the effective date of this amendatory Act of 1997), the transition charges otherwise applicable pursuant to subsections (f), (g), or (h) of this Section shall not be applicable in any year to that portion of the customer's electric power and energy requirements formerly obtained from those facilities, provided, that for purposes of this subsection (j), such portion shall not exceed the average number of kilowatt-hours per year obtained from the cogeneration or self-generation facilities during the 3 years prior to the date on which the customer became eligible for delivery services, except as provided in subsection (f) of Section 16-110.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-109 new)

Sec. 16-109. Unbundling of delivery services; Commission review. The General Assembly finds that the offering of delivery services will, and is intended to, facilitate the development of competition for generation services, and that competition may develop for other services currently offered on a tariffed basis by the electric utility. The Commission shall open a proceeding to investigate the need for and desirability of different or additional unbundling of delivery services for some or all electric utilities 3 years from the date that a tariff for delivery services is first approved or allowed into effect pursuant to this Section. The Commission shall open an additional proceeding to again investigate the need for and desirability of different or additional unbundling of delivery services for some or all electric utilities, 3 years after the entry of its final order in the first investigation proceeding. The Commission shall issue its final order in each investigation proceeding no later than 6 months after the proceeding is initiated. In each such proceeding the Commission shall consider, at a minimum, the effect of addi-

tional unbundling on (i) the objective of just and reasonable rates, (ii) electric utility employees, and (iii) the development of competitive markets for electric energy services in Illinois. Specific changes to the delivery services tariffs of individual electric utilities to implement findings and directives stated in an order in an investigation proceeding initiated under this Section shall be addressed through individual electric utility

tariff filings. The Commission may also, in accordance with Section 16-108, upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the need and desirability of requiring additional or other unbundling of delivery services offered by electric utilities.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-109A new)

Sec. 16-109A. Unbundling of prices for tariffed services; Commission investigation. In addition to the unbundling authorized under Sections 16-108 and 16-109, the Commission shall have the authority to investigate the need for, and to require, the restructuring or unbundling of prices for tariffed services, other than delivery services, offered by an electric utility; provided, however, that the Commission shall not enter an order requiring the restructuring or unbundling of prices for any such tariffed services for a customer class of an electric utility prior to the date that the class first becomes eligible for delivery services pursuant to Section 16-104.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-110 new)

Sec. 16-110. Delivery services customer power purchase options.

(a) Each electric utility shall offer a tariffed service or services in accordance with the terms and conditions set forth in this Section pursuant to which its non-residential delivery services customers may purchase from the electric utility an amount of electric power and energy that is equal to or less than the amounts that are delivered by such electric utility.

(b) Except as provided in subsection (c) of Section 16-112, a non-residential delivery services customer that is paying transition charges to the electric utility shall be permitted to purchase electric power and energy from the electric utility at a price or prices equal to the sum of (i) the market values that are determined for the electric utility in accordance with Section 16-112 and used by the electric utility to calculate the customer's transition charges and (ii) a fee that compensates the electric utility for any administrative costs it incurs in arranging to supply such electric power and energy. The electric utility may require that the customer purchase such electric power and energy for periods of not less than one year and may also require that the customer give up to 30 days notice for a purchase of one year's duration, and 90 day's notice for a purchase of more than one year's duration. A non-residential delivery service customer exercising the option described in this subsection may sell or assign its interests in the electric power or energy that the customer has purchased. At least twice per year, each electric utility shall notify its small commercial retail customers, through bill inserts and other similar means, of their option to obtain electric power and energy through purchases at market value pursuant to this subsection.

(c) After the transition charge period applicable to a non-residential delivery services customer, and until the provision of electric power and energy is declared competitive for the customer group to which the customer belongs, a non-residential delivery services customer that paid any transition charges it was legally obligated to

pay to an electric utility shall be permitted to purchase electric power and energy from the electric utility for contract periods of one year at a price or prices equal to the sum of (i) the market value determined for that customer's class pursuant to Section 16-112 and (ii) to the extent it is not included in such market value, a fee to compensate the electric utility for the service of arranging the supply or purchase of such electric power and energy. The electric utility may require that a delivery services customer give the following notice for such a purchase: (i) for a small commercial retail customer, not more than 30 days; (ii) for a nonresidential customer which is not a small commercial retail customer but which has maximum electrical demand of less than 500 kilowatts, not more than 6 months; (iii) for a nonresidential customer with maximum electrical demand of 500 kilowatts or more but less than one megawatt, not more than 9 months; and (iv) for a nonresidential customer with maximum electrical demand of one megawatt or more, not more than one year. At least twice per year, each electric utility shall notify its small commercial retail customers, through bill inserts or other similar means, of their option to obtain electric power and energy through purchases at market value pursuant to this subsection.

(d) After the transition charge period applicable to a non-residential delivery services customer, and until the provision of electric power and energy is declared competitive for the customer group to which the customer belongs, a non-residential delivery services customer, other than a small commercial retail customer, that paid any transition charges it was legally obligated to pay to an electric utility shall be permitted to purchase electric power and energy from the electric utility for contract periods of one year at a price or prices equal to (A) the sum of (i) the electric utility's actual cost of procuring such electric power and energy and (ii) a broker's fee to compensate the electric utility for arranging the supply, or, if the utility so elects, (B) the market value of electric power or energy provided by the electric utility determined as set forth in the electric utility's tariff for that customer's class. The electric utility may require that the delivery services customer give up to 30 days notice for such a purchase.

(e) Each delivery services customer purchasing electric power and energy from the electric utility pursuant to a tariff filed in accordance with this Section shall also pay all of the applicable charges set forth in the electric utility's delivery services tariffs and any other tariffs applicable to the services provided to that customer by the electric utility.

(f) An electric utility can require a retail customer taking delivery services that formerly generated electric power and energy for its own use and that would not otherwise pay transition charges on a portion of its electric power and energy requirements served on delivery services to pay transition charges on that portion of the customer's electric power and energy requirements as a condition of exercising the delivery services customer power purchase options set forth in this Section.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-111 new)

Sec. 16-111. Rates and restructuring transactions during mandatory transition period.

(a) During the mandatory transition period, notwithstanding any provision of Article IX of this Act, and except as provided in subsections (b), (d), (e), and (f) of this Section, the Commission shall not (i) initiate, authorize or order any change by way of increase (other than in connection with a request for rate increase which was filed after September 1, 1997 but prior to October 15, 1997, by an electric utility serving less than 12,500 customers in this state), (ii) initiate or, unless requested by the electric utility, authorize or order any change by way of decrease, restructuring or unbundling (except as provided in Section 16-109A), in the rates of any electric utility that were in effect on October 1, 1996, or (iii) in any order approving any application for a merger pursuant to Section 7-204 that was pending as of May 16, 1997, impose any condition requiring any filing for an increase, decrease, or change in, or other review of, an electric utility's rates or enforce any such condition of any such order; provided, however, that this subsection shall not prohibit the Commission from:

(1) approving the application of an electric utility to implement an alternative to rate of return regulation or a regulatory mechanism that rewards or penalizes the electric utility through adjustment of rates based on utility performance, pursuant to Section 9-244;

(2) authorizing an electric utility to eliminate its fuel adjustment clause and adjust its base rate tariffs in accordance with subsection (b), (d), or (f) of Section 9-220 of this Act, to fix its fuel adjustment factor in accordance with subsection (c) of Section 9-220 of this Act, or to eliminate its fuel adjustment clause in accordance with subsection (e) of Section 9-220 of this Act;

(3) ordering into effect tariffs for delivery services and transition charges in accordance with Sections 16-104 and 16-108, for real-time pricing in accordance with Section 16-107, or the options required by Section 16-110 and subsection (n) of 16-112, allowing a billing experiment in accordance with Section 16-106, or modifying delivery services tariffs in accordance with Section 16-109; or

(4) ordering or allowing into effect any tariff to recover charges pursuant to Sections 9-201.5, 9-220.1, 9-221, 9-222 (except as provided in Section 9-222.1), 16-108, and 16-114 of this Act, Section 5-5 of the Electricity Infrastructure Maintenance Fee Law, Section 6-5 of the Renewable Energy, Energy Efficiency, and Coal Resources Development Law of 1997, and Section 13 of the Energy Assistance Act of 1989.

(b) Notwithstanding the provisions of subsection (a), each Illinois electric utility serving more than 12,500 customers in Illinois shall file tariffs (i) reducing, effective

August 1, 1998, each component of its base rates to residential retail customers by 15% from the base rates in effect immediately prior to January 1, 1998 and (ii) if the public utility provides electric service to more than 500,000 customers in this State on the effective date of this amendatory Act of 1997, reducing, effective May 1, 2002, each component of its base rates to residential retail customers by an additional 5% from the

base rates in effect immediately prior to January 1, 1998. Provided, however, that (A) if an electric utility's average residential retail rate is less than or equal to the average residential retail rate for a group of Midwest Utilities (consisting of all investor-owned electric utilities with annual system peaks in excess of 1000 megawatts in the States of Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, Ohio, and Wisconsin), based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, then it shall only be required to file tariffs (i) reducing, effective August 1, 1998, each component of its base rates to residential retail customers by 5% from the base rates in effect immediately prior to January 1, 1998, (ii) reducing, effective October 1, 2000, each component of its base rates to residential retail customers by the lesser of 5% of the base rates in effect immediately prior to January 1, 1998 or the percentage by which the electric utility's average residential retail rate exceeds the average residential retail rate of the Midwest Utilities, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1999, and (iii) reducing, effective October 1, 2002, each component of its base rates to residential retail customers by an additional amount equal to the lesser of 5% of the base rates in effect immediately prior to January 1, 1998 or the percentage by which the electric utility's average residential retail rate exceeds the average residential retail rate of the Midwest Utilities, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 2001; and (B) if the average residential retail rate of an electric utility serving between 150,000 and 250,000 retail customers in this State on January 1, 1995 is less than or equal to 90% of the average residential retail rate for the Midwest Utilities, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, then it shall only be required to file tariffs (i) reducing, effective August 1, 1998, each component of its base rates to residential retail customers by 2% from the base rates in effect immediately prior to January 1, 1998; and (ii) reducing, effective October 1, 2000, each component of its base rates to residential retail customers by 2% from the base rate in effect immediately prior to January 1, 1998; and (iii) reducing, effective October 1, 2002, each component of its base rates to residential retail customers by 1% from the base rates in effect immediately prior to January 1, 1998. Provided, further, that any electric utility for which a decrease in base rates has been or is placed into effect between October 1, 1996 and the dates specified in the preceding sentences of this subsection, other than pursuant to the requirements of this subsection, shall be entitled to reduce the amount of any reduction or reductions in its base rates required by this subsection by the amount of such other decrease. The tariffs required under this subsection shall be filed 45 days in advance of the effective date. Notwithstanding anything to the contrary in Section 9-220 of this Act, no restatement of base rates in conjunction with the elimination of a fuel adjustment clause under that Section shall result in a lesser decrease in base rates than customers would otherwise receive under this subsection had the electric utility's fuel adjustment clause not been eliminated.

(c) Any utility reducing its base rates by 15% on August 1, 1998 pursuant to subsection (b) shall include the following statement on its bills for residential customers from August 1 through December 31, 1998: "Effective August 1, 1998, your rates have been reduced by 15% by the Electric Service Customer Choice and Rate Relief Law of

1997 passed by the Illinois General Assembly.". Any utility reducing its base rates by 5% on August 1, 1998, pursuant to subsection (b) shall include the following statement on its bills for residential customers from August 1 through December 31, 1998:

"Effective August 1, 1998, your rates have been reduced by 5% by the Electric Service Customer Choice and Rate Relief Law of 1997 passed by the Illinois General Assembly."

Any utility reducing its base rates by 2% on August 1, 1998 pursuant to subsection (b) shall include the following statement on its bills for residential customers from August 1 through December 31, 1998: "Effective August 1, 1998, your rates have been reduced by 2% by the Electric Service Customer Choice and Rate Relief Law of 1997 passed by the Illinois General Assembly."

(d) During the mandatory transition period, but not before January 1, 2000, and notwithstanding the provisions of subsection (a), an electric utility may request an increase in its base rates if the electric utility demonstrates that the 2-year average of its earned rate of return on common equity, calculated as its net income applicable to common stock divided by the average of its beginning and ending balances of common equity using data reported in the electric utility's Form 1 report to the Federal Energy Regulatory Commission but adjusted to remove the effects of accelerated depreciation or amortization or other transition or mitigation measures implemented by the electric utility pursuant to subsection (g) of this Section and the effect of any refund paid pursuant to subsection (e) of this Section, is below the 2-year average for the same 2 years of the monthly average yields of 30-year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 Statistical Release or successor publication. The Commission shall review the electric utility's request, and may review the justness and reasonableness of all rates for tariffed services, in accordance with the provisions of Article IX of this Act, provided that the Commission shall consider any special or negotiated adjustments to the revenue requirement agreed to between the electric utility and the other parties to the proceeding. In setting rates under this Section, the Commission shall exclude the costs and revenues that are associated with competitive services and any billing or pricing experiments conducted under Section 16-106.

(e) For the purposes of this subsection (e) all calculations and comparisons shall be performed for the Illinois operations of multijurisdictional utilities. During the mandatory transition period, notwithstanding the provisions of subsection (a), if the 2-year average of an electric utility's earned rate of return on common equity, calculated as its net income applicable to common stock divided by the average of its beginning and ending balances of common equity using data reported in the electric utility's Form 1 report to the Federal Energy Regulatory Commission but adjusted to remove the effect of any refund paid under this subsection (e), and further adjusted to include the annual amortization of any difference between the consideration received by an affiliated interest of the electric utility in the sale of an asset which had been sold or transferred by the electric utility to the affiliated interest subsequent to the effective date of this amendatory Act of 1997 and the consideration for which such asset had been sold or transferred to the affiliated interest, with such difference to be amortized ratably from the date of the sale by the affiliated interest to December 31, 2006, exceeds the 2-year average of the Index for the same 2 years by 1.5 or more percentage points, the electric

utility shall make refunds to customers beginning the first billing day of April in the following year in the manner described in paragraph (3) of this subsection. For purposes of this subsection (e), the "Index" shall be the sum of (A) the average for the 12 months ended September 30 of the monthly average yields of 30-year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its

weekly H.15 Statistical Release or successor publication for each year 1998 through 2004, and (B) (i) 4.00 percentage points for each of the 12-month periods ending September 30, 1998 through September 30, 1999 or 8.00 percentage points if the electric utility's average residential retail rate is less than or equal to 90% of the average residential retail rate for the "Midwest Utilities", as that term is defined in subsection (b) of this Section, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995, and the electric utility served between 150,000 and 250,000 retail customers on January 1, 1995, or (ii) 5.00 percentage points for each of the 12-month periods ending September 30, 2000 through September 30, 2004 or 9.00 percentage points if the electric utility's average residential retail rate is less than or equal to 90% of the average residential retail rate for the "Midwest Utilities", as that term is defined in subsection (b) of this Section, based on data reported on Form 1 to the Federal Energy Regulatory Commission for calendar year 1995 and the electric utility served between 150,000 and 250,000 retail customers in this State on January 1, 1995.

(1) For purposes of this subsection (e), "excess earnings" means the difference between (A) the 2-year average of the electric utility's earned rate of return on common equity, less (B) the 2-year average of the sum of (i) the Index applicable to each of the 2 years and (ii) 1.5 percentage points; provided, that "excess earnings" shall never be less than zero.

(2) On or before March 31 of each year 2000 through 2005 each electric utility shall file a report with the Commission showing its earned rate of return on common equity, calculated in accordance with this subsection, for the preceding calendar year and the average for the preceding 2 calendar years.

(3) If an electric utility has excess earnings, determined in accordance with paragraphs (1) and (2) of this subsection, the refunds which the electric utility shall pay to its customers beginning the first billing day of April in the following year shall be calculated and applied as follows:

(i) The electric utility's excess earnings shall be multiplied by the average of the beginning and ending balances of the electric utility's common equity for the 2-year period in which excess earnings occurred.

(ii) The result of the calculation in (i) shall be multiplied by 0.50 and then divided by a number equal to 1 minus the electric utility's composite federal and State income tax rate.

(iii) The result of the calculation in (ii) shall be divided by the sum of the electric utility's projected total kilowatt-hour sales to retail customers plus projected kilowatt-hours to be delivered to delivery services customers over a one year period beginning with the first billing date in April in the succeeding year to determine a cents per kilowatt-hour refund factor.

(iv) The cents per kilowatt-hour refund factor calculated in (iii) shall be credited to the electric utility's customers by applying the factor on the customer's monthly bills to each kilowatt-hour sold or delivered until the total amount calculated in (ii) has been paid to customers.

(f) During the mandatory transition period, an electric utility may file revised tariffs reducing the price of any tariffed service offered by the electric utility for all customers taking that tariffed service, which shall be effective 7 days after filing.

(g) During the mandatory transition period, an electric utility may, without obtaining any approval of the Commission other than that provided for in this subsection and notwithstanding any other provision of this Act or any rule or regulation of the Commission that would require such approval:

(1) implement a reorganization, other than a merger of 2 or more public utilities as defined in Section 3-105 or their holding companies;

(2) retire generating plants from service;

(3) sell, assign, lease or otherwise transfer assets to an affiliated or unaffiliated entity and as part of such transaction enter into service agreements, power purchase agreements, or other agreements with the transferee; provided, however, that the prices, terms and conditions of any power purchase agreement must be approved or allowed into effect by the Federal Energy Regulatory Commission; or

(4) use any accelerated cost recovery method including accelerated depreciation, accelerated amortization or other capital recovery methods, or record reductions to the original cost of its assets. In order to implement a reorganization, retire generating plants from service, or sell, assign, lease or otherwise transfer assets pursuant to this Section, the electric utility shall comply with subsections (c) and (d) of Section 16-128, if applicable, and provide the Commission with at least 30 days notice of the proposed reorganization or transaction, which notice shall include the following information:

(i) a complete statement of the entries that the electric utility will make on its books and records of account to implement the proposed reorganization or transaction together with a certification from an independent certified public accountant that such entries are in accord with generally accepted accounting principles and, if the Commission has previously approved guidelines for cost allocations between the utility and its affiliates, a certification from the chief accounting officer of the utility that such entries are in accord with those cost allocation guidelines;

(ii) a description of how the electric utility will use proceeds of any sale, assignment, lease or transfer to retire debt or otherwise reduce or recover the costs of services provided by such electric utility;

(iii) a list of all federal approvals or approvals required from departments and agencies of this State, other than the Commission, that

the electric utility has or will obtain before implementing the reorganization or transaction;

(iv) an irrevocable commitment by the electric utility that it will not, as a result of the transaction, impose any stranded cost charges that it might otherwise be allowed to charge retail customers under federal law or increase the transition charges that it is otherwise entitled to collect under this Article XVI; and

(v) if the electric utility proposes to sell, assign, lease or otherwise transfer a generating plant that brings the amount of net dependable generating capacity transferred pursuant to this subsection to an amount equal to or greater than 15% of the electric utility's net dependable capacity as of the effective date of this amendatory Act of 1997, and enters into a power purchase agreement with the entity to which such generating plant is sold, assigned, leased, or otherwise transferred, the electric utility also agrees, if its fuel adjustment clause has not already been eliminated, to eliminate its fuel adjustment clause in accordance with subsection (b) of Section 9-220 for a period of time equal to the length of any such power purchase agreement or successor agreement, or until January 1, 2005, whichever is longer; if the capacity of the generating plant so transferred and related power purchase agreement does not result in the elimination of the fuel adjustment clause under this subsection, and the fuel adjustment clause has not already been eliminated, the electric utility shall agree that the costs associated with the transferred plant that are included in the calculation of the rate per kilowatt-hour to be applied pursuant to the electric utility's fuel adjustment clause during such period shall not exceed the per kilowatt-hour cost associated with such generating plant included in the electric utility's fuel adjustment clause during the full calendar year preceding the transfer, with such limit to be adjusted each year thereafter by the Gross Domestic Product Implicit Price Deflator.

(vi) In addition, if the electric utility proposes to sell, assign, or lease, (A) either (1) an amount of generating plant that brings the amount of net dependable generating capacity transferred pursuant to this subsection to an amount equal to or greater than 15% of its net dependable capacity on the effective date of this amendatory Act of 1997, or (2) one or more generating plants with a total net dependable capacity of 1100 megawatts, or (B) transmission and distribution facilities that either (1) bring the amount of transmission and distribution facilities transferred pursuant to this subsection to an amount equal to or greater than 15% of the electric utility's total depreciated original cost investment in such facilities, or (2) represent an investment of \$25,000,000 in terms of total depreciated original cost, the electric utility shall provide, in addition to the information listed in subparagraphs (i) through (v), the following information: (A) a description of how the electric utility will meet its service obligations under this Act in a safe and reliable manner and (B) the electric utility's projected earned rate of return on common equity, calculated in

accordance with subsection (d) of this Section, for each year from the date of the notice through December 31, 2004 both with and without the proposed transaction. If the Commission has not issued an order initiating a hearing on the proposed transaction within 30 days after the date the electric utility's notice is filed, the transaction shall be deemed

approved. The Commission may, after notice and hearing, prohibit the proposed transaction if it makes either or both of the following findings: (1) that the proposed transaction will render the electric utility unable to provide its tariffed services in a safe and reliable manner, or (2) that there is a strong likelihood that consummation of the proposed transaction will result in the electric utility being entitled to request an increase in its base rates during the mandatory transition period pursuant to subsection (d) of this Section. Any hearing initiated by the Commission into the proposed transaction shall be completed, and the Commission's final order approving or prohibiting the proposed transaction shall be entered, within 90 days after the date the electric utility's notice was filed. Provided, however, that a sale, assignment, or lease of transmission facilities to an independent system operator that meets the requirements of Section 16-126 shall not be subject to Commission approval under this Section. In any proceeding conducted by the Commission pursuant to this subparagraph (vi), intervention shall be limited to parties with a direct interest in the transaction which is the subject of the hearing and any statutory consumer protection agency as defined in subsection (d) of Section 9-102.1. Notwithstanding the provisions of Section 10-113 of this Act, any application seeking rehearing of an order issued under this subparagraph (vi), whether filed by the electric utility or by an intervening party, shall be filed within 10 days after service of the order. The Commission shall not in any subsequent proceeding or otherwise, review such a reorganization or other transaction authorized by this Section, but shall retain the authority to allocate costs as stated in Section 16-111(i). An entity to which an electric utility sells, assigns, leases or transfers assets pursuant to this subsection (g) shall not, as a result of the transactions specified in this subsection (g), be deemed a public utility as defined in Section 3-105. Nothing in this subsection (g) shall change any requirement under the jurisdiction of the Illinois Department of Nuclear Safety including, but not limited to, the payment of fees. Nothing in this subsection (g) shall exempt a utility from obtaining a certificate pursuant to Section 8-406 of this Act for the construction of a new electric generating facility. Nothing in this subsection (g) is intended to exempt the transactions hereunder from the operation of the federal or State antitrust laws. Nothing in this subsection (g) shall require an electric utility to use the procedures specified in this subsection for any of the transactions specified herein. Any other procedure available under this Act may, at the electric utility's election, be used for any such transaction.

(h) During the mandatory transition period, the Commission shall not establish or use any rates of depreciation, which for purposes of this subsection shall include amortization, for any electric utility other than those established pursuant to subsection (c) of Section 5-104 of this Act or utilized pursuant to subsection (g) of this Section. Provided, however, that in any proceeding to review an electric utility's rates for tariffed services pursuant to Section 9-201, 9-202, 9-250 or 16-111(d) of this Act, the Commis-

sion may establish new rates of depreciation for the electric utility in the same manner provided in subsection (d) of Section 5-104 of this Act. An electric utility implementing an accelerated cost recovery method including accelerated depreciation, accelerated amortization or other capital recovery methods, or recording reductions to the original cost of its assets, pursuant to subsection (g) of this Section, shall file a statement with

the Commission describing the accelerated cost recovery method to be implemented or the reduction in the original cost of its assets to be recorded. Upon the filing of such statement, the accelerated cost recovery method or the reduction in the original cost of assets shall be deemed to be approved by the Commission as though an order had been entered by the Commission.

(i) Subsequent to the mandatory transition period, the Commission, in any proceeding to establish rates and charges for tariffed services offered by an electric utility, shall consider only (1) the then current or projected revenues, costs, investments and cost of capital directly or indirectly associated with the provision of such tariffed services; (2) collection of transition charges in accordance with Sections 16-102 and 16-108 of this Act; (3) recovery of any employee transition costs as described in Section 16-128 which the electric utility is continuing to incur, including recovery of any unamortized portion of such costs previously incurred or committed, with such costs to be equitably allocated among bundled services, delivery services, and contracts with alternative retail electric suppliers; and (4) recovery of the costs associated with the electric utility's compliance with decommissioning funding requirements; and shall not consider any other revenues, costs, investments or cost of capital of either the electric utility or of any affiliate of the electric utility that are not associated with the provision of tariffed services. In setting rates for tariffed services, the Commission shall equitably allocate joint and common costs and investments between the electric utility's competitive and tariffed services. In determining the justness and reasonableness of the electric power and energy component of an electric utility's rates for tariffed services subsequent to the mandatory transition period and prior to the time that the provision of such electric power and energy is declared competitive, the Commission shall consider the extent to which the electric utility's tariffed rates for such component for each customer class exceed the market value determined pursuant to Section 16-112, and, if the electric power and energy component of such tariffed rate exceeds the market value by more than 10% for any customer class, may establish such electric power and energy component at a rate equal to the market value plus 10%. In any such case, the Commission may also elect to extend the provisions of Section 16-111(e) for any period in which the electric utility is collecting transition charges, using information applicable to such period.

(j) During the mandatory transition period, an electric utility may elect to transfer to a non-operating income account under the Commission's Uniform System of Accounts either or both of (i) an amount of unamortized investment tax credit that is in addition to the ratable amount which is credited to the electric utility's operating income account for the year in accordance with Section 46(f)(2) of the federal Internal Revenue Code of 1986, as in effect prior to P.L. 101-508, or (ii) "excess tax reserves", as that term is defined in Section 203(e)(2)(A) of the federal Tax Reform Act of 1986, provided that (A) the amount transferred may not exceed the amount of the electric utility's assets that were created pursuant to Statement of Financial Accounting Standards No. 71 which the electric utility has written off during the mandatory transition period, and (B) the transfer shall not be effective until approved by the Internal Revenue Service. An electric utility electing to make such a transfer shall file a statement with the Com-

mission stating the amount and timing of the transfer for which it intends to request approval of the Internal Revenue Service, along with a copy of its proposed request to

the Internal Revenue Service for a ruling. The Commission shall issue an order within 14 days after the electric utility's filing approving, subject to receipt of approval from the Internal Revenue Service, the proposed transfer.

(Source: P.A. 90-563, effective December 16, 1997)

(220 ILCS 5/16-112 new)

Sec. 16-112. Determination of market value.

(a) The market value to be used in the calculation of transition charges as defined in Section 16-102 shall be determined in accordance with either (i) a tariff that has been filed by the electric utility with the Commission pursuant to Article IX of this Act and that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy, or (ii) in the event no such tariff has been placed into effect for the electric utility, or in the event such tariff does not establish market values for each of the years specified in the neutral fact-finder process described in subsections (b) through (h) of this Section, a tariff incorporating the market values resulting from the neutral fact-finder process set forth in subsections (b) through (h) of this Section.

(b) Except as provided in subsection (m) of this Section, on or before April 30, 1998, on or before February 28, 1999, and on or before each April 30 from 2000 until 2007, the Commission shall appoint a neutral fact-finder to make the calculations described in subsection (c) of this Section. The neutral fact-finder shall be a member of a national public accounting firm, shall not have served as the neutral fact-finder in the previous year, and shall be selected from a list of candidates provided by a nationally recognized provider of neutral fact-finders that has established rules for maintaining confidentiality. An amount sufficient to pay the fees of the neutral fact-finder shall be appropriated annually from the Public Utility Fund in the State treasury.

(c) On or before June 1, 1998, on or before April 1, 1999, and on or before each June 1 from 2000 until 2007, or until discontinued in accordance with subsection (m) of this Section, each electric utility and each alternative retail electric supplier shall submit to the neutral fact-finder a summary of (A) all contracts entered into after June 1, 1997 that are for the sale of electric power and energy from a generating facility or facilities located in this State or located in a contiguous State and owned by an electric utility as part of its interconnected operating system and delivery during one or more of the 5 years succeeding the date of submission, and (B) all contracts entered into after June 1, 1997 for purchase and delivery of electric power and energy in or into this State during one or more of the 5 years succeeding the date of submission; provided, however, that such contracts shall not include (i) contracts between the electric utility and an affiliate; (ii) sales, purchases, or deliveries made under rates and tariffs filed with the Commission, except for tariffs filed pursuant to subsection (d) of Section 16-110 and

except for special or negotiated rate contracts between an electric utility and a retail customer to the extent that such contracts are for the provision of electric power and energy after the date that the customer becomes eligible for delivery services; and (iii) extensions or amendments to full requirements wholesale contracts existing as of

the effective date of this amendatory Act of 1997, provided that such contracts, extensions, or amendments are cost of service regulated by the Federal Energy Regulatory Commission. The summaries shall, at a minimum, identify the date of the contract; the year in which the electric power or energy is to be sold or delivered; the point of delivery; defining characteristics such as the nature of the power transaction (for example, reserve responsibility (firm, non-firm)), length of contract and temporal differences (for example, season, on-peak or off-peak); and the applicable prices stated at the point at which the electric power and energy leaves the electric utility's or alternative retail electric supplier's transmission system, as the case may be, in the case of contracts described in item (A) and at the point at which the electric power and energy enters the electric utility's transmission system in the case of contracts in item (B), provided, that the applicable price shall be stated at the point at which the electric power and energy enters the electric utility's transmission system in the case of electric power and energy generated for delivery within the electric utility's service area. In reporting to the neutral fact-finder the price of power and energy sold under bundled service contracts, electric utilities and alternative retail electric suppliers shall deduct from the contract price the charges for delivery services, including transition charges, applicable to delivery services customers in a utility's service area, and charges for services, if any, other than the provision of power and energy or delivery services. The Commission may adopt orders setting forth requirements governing the form and content of such summaries.

(d) The neutral fact-finder shall calculate market values for electric power and energy for each electric utility, taking into account the defining characteristics set forth in subsection (c) of this Section; provided, however, that the neutral fact-finder may determine that a particular value is appropriate for more than one electric utility, or for all electric utilities in this State. The neutral fact-finder shall calculate the market values for the next year and, to the extent the summaries include a sufficient number of actual contracts to represent a viable market for the sale and delivery of electric power and energy in subsequent years, for each of the 4 succeeding years.

(e) In calculating market values for electric power, the neutral fact-finder shall weight contract prices (including any contract price indices) by both the amount of capacity covered by the contract and the number of hours in which capacity is to be provided under the contract in each period of the year, shall take into account all of the defining characteristics set forth in subsection (c) of this Section and shall develop such values as required to represent the different types of market values of electric power.

(f) The neutral fact-finder shall base calculations of the market values for electric energy on the energy prices stated in the contracts, and where no explicit energy prices or index price basis are stated, on the actual energy costs of the supplier in the corresponding period of the preceding year that would have been applicable to the electric energy provided under the contract. The neutral fact-finder shall develop market values for electric energy and shall take into account the defining characteristics set forth in subsection (c) of this Section, as required to represent the market values of such electric energy.

(g) If the contracts used by the neutral fact-finder base prices for future years on one or more indices, the neutral fact-finder shall identify such indices in his or her final report, develop a weighting for each index, and calculate a weighted average index. The market values shall be calculated using the weighted average index when the actual values of the component indices are known.

(h) The neutral fact-finder shall publish a final report on or before July 30 of each year, except that in 1999 the neutral fact finder shall publish the report on or before May 30, setting forth the calculated market values and stating the basis for such calculations. The final report shall not, however, disclose any proprietary or confidential data.

(i) The market values calculated by the neutral fact-finder shall not be admissible in any proceeding for any purpose other than the calculation of transition charges or calculation of the price for the power purchase options provided pursuant to subsection (b) and (c) of Section 16-110.

(j) The Commission shall have access to all contracts described in subsection (c) of this Section and shall perform such audits as it and the neutral fact-finder deem necessary to insure the accuracy of the summaries submitted to the neutral fact-finder. The summaries described in subsection (c) of this Section and each contract shall be accorded confidential and proprietary treatment and their review shall be subject to the provisions of Sections 4-404 and 5-108 of this Act, and the contract between the Commission and the neutral fact-finder shall contain provisions obligating the neutral fact-finder to comply with such Sections. The summaries shall not be discoverable by any party in any proceeding absent a compelling demonstration of need.

(k) In determining the market values to be used for the various customer classes in calculating transition charges as defined in Section 16-102 or for the power purchase options set forth in Section 16-110, an electric utility shall apply the market values that are determined as set forth in subsection (a) to the electric power and energy that would have been used to serve the delivery services customers' electric power and energy requirements, based on the usage specified in Section 16-102 and taking into account the daily, monthly, annual and other relevant characteristics of the customers' demands on the electric utility's system.

(l) In calculating a lump sum transition charge payment for the purposes of subsection (h) of Section 16-108, the electric utility shall use the market values that were determined as provided in its tariff, or if such market values have not been determined for the full period of time covered by such lump sum calculation, such other basis as is stated in the electric utility's tariff filed pursuant to Section 16-108.

(m) The Commission may approve or reject, or propose modifications to, any tariff providing for the determination of market value that has been proposed by an electric utility pursuant to subsection (a) of this Section, but shall not have the power to otherwise order the electric utility to implement a modified tariff or to place into effect

any tariff for the determination of market value other than one incorporating the neutral fact-finder procedure set forth in this Section. Provided, however, that if each electric utility serving at least 300,000 customers has placed into effect a tariff that provides for a determination of market value as a function of an exchange traded or other market traded index, options or futures contract or contracts, then the Commission can require

any other electric utilities to file such a tariff, and can terminate the neutral fact-finder procedure for the periods covered by such tariffs.

(n) To the extent that the summaries list a sufficient number of actual contracts to represent a viable market and market values can be determined for more than one year, the electric utility shall offer customers that are obligated to pay transition charges contracts that establish for one or more years, up to a maximum of the lesser of 5 years or the remaining number of years until December 31, 2008, the market value or values to be used in calculating the customer's transition charges in such years and for which market value determinations have been made. The electric utility may require any customer to give up to one year notice prior to entering into a one or 2 year contract pursuant to this subsection, up to 2 years notice for a 3 year contract, and up to 3 years notice for a 4 or 5 year contract. Contracts of one or 2 years duration shall incorporate the market values that were determined as provided in this Section in the year in which the notice is required to be given. Contracts of more than 2 years duration shall incorporate the market values that are determined in the year prior to the first year in which the electric utility will collect transition charges from the customer under the contract. The electric utility shall also allow customers to select, at the time that a customer gives its notice, an option to revoke the notice within 30 days following the determination of the market values that will apply under the contract requested by the customer, and may charge customers a fee for such option that is set forth in a tariff filed pursuant to Article IX and that is adequate to allow the electric utility to recover its transactional costs and compensate it based on the cost that would be incurred to purchase an option to cover the risk associated with the customer's option to revoke. The electric utility shall not be required to offer customers a contract under this paragraph for any year for which no determination of market value has been made either by the neutral fact-finder or pursuant to a tariff filed by the electric utility.

(o) An electric utility shall have no obligation to provide electric power or energy as a tariffed service for the electric power and energy requirements placed on delivery service by any customer that has entered into a contract pursuant to subsection (n) of this Section and has not purchased and exercised an option to revoke, during the term of the contract. A customer that has purchased and exercised an option to revoke under this subsection shall remain eligible to receive any tariffed service for which it would otherwise be eligible.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-113 new)

Sec. 16-113. Declaration of service as a competitive service.

(a) An electric utility may, by petition, request the Commission to declare a tariffed service provided by the electric utility to be a competitive service. The electric utility shall give notice of its petition to the public in the same manner that public notice is provided for proposed general increases in rates for tariffed services, in accordance with rules and regulations prescribed by the Commission. The Commission shall hold a

hearing on the petition if a hearing is deemed necessary by the Commission. The Commission shall declare the service to be a competitive service for some identifiable customer segment or group of customers, or some clearly defined geographical area

within the electric utility's service area, if the service or a reasonably equivalent substitute service is reasonably available to the customer segment or group or in the defined geographical area at a comparable price from one or more providers other than the electric utility or an affiliate of the electric utility, and the electric utility has lost or there is a reasonable likelihood that the electric utility will lose business for the service to the other provider or providers; provided, that the Commission may not declare the provision of electric power and energy to be competitive pursuant to this subsection with respect to (i) any retail customer or group of retail customers that is not eligible pursuant to Section 16-104 to take delivery services provided by the electric utility and (ii) any residential and small commercial retail customers prior to the last date on which such customers are required to pay transition charges. In determining whether to grant or deny a petition to declare the provision of electric power and energy competitive, the Commission shall consider, in applying the above criteria, whether there is adequate transmission capacity into the service area of the petitioning electric utility to make electric power and energy reasonably available to the customer segment or group or in the defined geographical area from one or more providers other than the electric utility or an affiliate of the electric utility, in accordance with this subsection. The Commission shall make its determination and issue its final order declaring or refusing to declare the service to be a competitive service within 120 days following the date that the petition is filed, or otherwise the petition shall be deemed to be granted; provided, that if the petition is deemed to be granted by operation of law, the Commission shall not thereby be precluded from finding and ordering, in a subsequent proceeding initiated by the Commission, and after notice and hearing, that the service is not competitive based on the criteria set forth in this subsection.

(b) Any customer except a customer identified in subsection (c) of Section 16-103 who is taking a tariffed service that is declared to be a competitive service pursuant to subsection (a) of this Section shall be entitled to continue to take the service from the electric utility on a tariffed basis for a period of 3 years following the date that the service is declared competitive, or such other period as is stated in the electric utility's tariff pursuant to Section 16-110. This subsection shall not require the electric utility to offer or provide on a tariffed basis any service to any customer (except those customers identified in subsection (c) of Section 16-103) that was not taking such service on a tariffed basis on the date the service was declared to be competitive.

(c) If the Commission denies a petition to declare a service to be a competitive service, or determines in a separate proceeding that a service is not competitive based on the criteria set forth in subsection (a), the electric utility may file a new petition no earlier than 6 months following the date of the Commission's order, requesting, on the basis of additional or different facts and circumstances, that the service be declared to be a competitive service.

(d) The Commission shall not deny a petition to declare a service to be a competitive service, and shall not find that a service is not a competitive service, on the grounds that it has previously denied the petition of another electric utility to declare the same or a similar service to be a competitive service or has previously determined that

the same or a similar service provided by another electric utility is not a competitive service.

(e) An electric utility may declare a service, other than delivery services or the provision of electric power or energy, to be competitive by filing with the Commission at least 14 days prior to the date on which the service is to become competitive a notice describing the service that is being declared competitive and the date on which it will become competitive; provided, that any customer who is taking a tariffed service that is declared to be a competitive service pursuant to this subsection (e) shall be entitled to continue to take the service from the electric utility on a tariffed basis until the electric utility files, and the Commission grants, a petition to declare the service competitive in accordance with subsection (a) of this Section. The Commission shall be authorized to find and order, after notice and hearing in a subsequent proceeding initiated by the Commission, that any service declared to be competitive pursuant to this subsection (e) is not competitive in accordance with the criteria set forth in subsection (a) of this Section.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-114 new)

Sec. 16-114. Recovery of decommissioning charges. On or before April 1, 1999, each electric utility owning an interest in, or having responsibility as a matter of contract or statute for decommissioning costs as defined in Section 8-508.1 of, one or more nuclear power plants shall file with the Commission a tariff or tariffs conforming to the provisions of Section 9-201.5 of this Act, to be applicable to each and every kilowatt-hour of electricity delivered or sold at retail in the electric utility's service area, including, but not limited to, sales by the electric utility to tariffed services retail customers, sales by the electric utility to retail customers pursuant to special contracts or other negotiated arrangements, sales by alternative retail electric suppliers, and sales by an electric utility other than the electric utility in whose service area the retail customer is located; provided, however, that for a user that obtained electric power and energy from its own cogeneration or self-generation facilities on or before January 1, 1997, and subsequently takes services from an alternative retail electric supplier or an electric utility other than the electric utility in whose service area the user is located for any portion of its electric power and energy requirements formerly obtained from those facilities, the tariff required by this Section shall not be applicable in any year to that portion of the user's electric power and energy requirements formerly obtained from those facilities, provided that for the purposes of this Section, such portion shall not exceed the average number of kilowatt-hours per year obtained from the cogeneration or self-generation facilities during the 3 years prior to the date on which the user became eligible for delivery services.

The Commission shall determine whether the tariff meets the requirements of Sections 9-201 and 9-201.5 and of this Section, and shall permit the electric utility's tariff together with any modifications made after hearing to become effective no later than October 1, 1999. In making its determination, the Commission shall retain the authority it possessed prior to the effective date of this amendatory Act of 1997 to make jurisdictional allocations of decommissioning expense recovery. The tariff filed pursuant

to this Section shall be applicable to any user taking some or all of its electric power and energy requirements from an alternative retail electric supplier or from an electric utility other than the electric utility in whose service area the user is located on

and after the date that the user becomes eligible for delivery services in accordance with Section 16-104. If the electric utility has in effect as of the effective date of this amendatory Act of 1997 a decommissioning rate as defined in Section 9-201.5 conforming to the requirements of that Section, the tariff or tariffs required by this Section shall if the electric utility requests be consistent with its decommissioning rate that is already in effect; provided, that the tariff or tariffs filed pursuant to this Section shall provide for the removal from base rates of any decommissioning costs that are included in the electric utility's base rates and their inclusion in the tariff or tariffs required by this Section. The tariff required by this Section shall be included by the Commission in the reviews required by subsection (d) of Section 9-201.5.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-115 new)

Sec. 16-115. Certification of alternative retail electric suppliers.

(a) Any alternative retail electric supplier must obtain a certificate of service authority from the Commission in accordance with this Section before serving any retail customer or other user located in this State. An alternative retail electric supplier may request, and the Commission may grant, a certificate of service authority for the entire State or for a specified geographic area of the State.

(b) An alternative retail electric supplier seeking a certificate of service authority shall file with the Commission a verified application containing information showing that the applicant meets the requirements of this Section. The alternative retail electric supplier shall publish notice of its application in the official State newspaper within 10 days following the date of its filing. No later than 45 days after the application is properly filed with the Commission, and such notice is published, the Commission shall issue its order granting or denying the application.

(c) An application for a certificate of service authority shall identify the area or areas in which the applicant intends to offer service and the types of services it intends to offer. Applicants that seek to serve residential or small commercial retail customers within a geographic area that is smaller than an electric utility's service area shall submit evidence demonstrating that the designation of this smaller area does not violate Section 16-115A. An applicant that seeks to serve residential or small commercial retail customers may state in its application for certification any limitations that will be imposed on the number of customers or maximum load to be served.

(d) The Commission shall grant the application for a certificate of service authority if it makes the findings set forth in this subsection based on the verified application and such other information as the applicant may submit:

(1) That the applicant possesses sufficient technical, financial and managerial resources and abilities to provide the service for which it seeks a certificate of service authority. In determining the level of technical, financial and managerial resources and abilities which the applicant must demonstrate, the Commission shall consider (i) the characteristics, including the size and financial sophistication, of the customers that the applicant seeks to serve, and

(ii) whether the applicant seeks to provide electric power and energy using property, plant and equipment which it owns, controls or operates;

(2) That the applicant will comply with all applicable federal, State, regional and industry rules, policies, practices and procedures for the use, operation, and maintenance of the safety, integrity and reliability, of the inter-connected electric transmission system;

(3) That the applicant will only provide service to retail customers in an electric utility's service area that are eligible to take delivery services under this Act;

(4) That the applicant will comply with such informational or reporting requirements as the Commission may by rule establish and provide the information required by Section 16-112. Any data related to contracts for the purchase and sale of electric power and energy shall be made available for review by the Staff of the Commission on a confidential and proprietary basis and only to the extent and for the purposes which the Commission determines are reasonably necessary in order to carry out the purposes of this Act;

(5) That if the applicant, its corporate affiliates or the applicant's principal source of electricity (to the extent such source is known at the time of the application) owns or controls facilities, for public use, for the transmission or distribution of electricity to end-users within a defined geographic area to which electric power and energy can be physically and economically delivered by the electric utility or utilities in whose service area or areas the proposed service will be offered, the applicant, its corporate affiliates or principal source of electricity, as the case may be, provides delivery services to the electric utility or utilities in whose service area or areas the proposed service will be offered that are reasonably comparable to those offered by the electric utility, and provided further, that the applicant agrees to certify annually to the Commission that it is continuing to provide such delivery services and that it has not knowingly assisted any person or entity to avoid the requirements of this Section. For purposes of this subparagraph, "principal source of electricity" shall mean a single source that supplies at least 65% of the applicant's electric power and energy, and the purchase of transmission and distribution services pursuant to a filed tariff under the jurisdiction of the Federal Energy Regulatory Commission or a state public utility commission shall not constitute control of access to the provider's transmission and distribution facilities;

(6) With respect to an applicant that seeks to serve residential or small commercial retail customers, that the area to be served by the applicant and any limitations it proposes on the number of customers or maximum amount of load to be served meet the provisions of Section 16-115A, provided, that the Commission can extend the time for considering such a certificate request by up to 90 days, and can schedule hearings on such a request;

(7) That the applicant meets the requirements of subsection (a) of Section 16-128; and

(8) That the applicant will comply with all other applicable laws and regulations.

(e) A retail customer that owns a cogeneration or self-generation facility and that seeks certification only to provide electric power and energy from such facility to retail customers at separate locations which customers are both (i) owned by, or a subsidiary or other corporate affiliate of, such applicant and (ii) eligible for delivery services, shall be granted a certificate of service authority upon filing an application and notifying the Commission that it has entered into an agreement with the relevant electric utilities pursuant to Section 16-118.

(f) The Commission shall have the authority to promulgate rules and regulations to carry out the provisions of this Section. On or before May 1, 1999, the Commission shall adopt a rule or rules applicable to the certification of those alternative retail electric suppliers that seek to serve only nonresidential retail customers with maximum electrical demands of one megawatt or more which shall provide for (i) expedited and streamlined procedures for certification of such alternative retail electric suppliers and (ii) specific criteria which, if met by any such alternative retail electric supplier, shall constitute the demonstration of technical, financial and managerial resources and abilities to provide service required by subsection (d) (1) of this Section, such as a requirement to post a bond or letter of credit, from a responsible surety or financial institution, of sufficient size for the nature and scope of the services to be provided; demonstration of adequate insurance for the scope and nature of the services to be provided; and experience in providing similar services in other jurisdictions.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-115A new)

Sec. 16-115A. Obligations of alternative retail electric suppliers.

(a) An alternative retail electric supplier shall:

(i) comply with the requirements imposed on public utilities by Sections 8-201 through 8-207, 8-301, 8-505 and 8-507 of this Act, to the extent that these sections have application to the services being offered by the alternative retail electric supplier; and

(ii) continue to comply with the requirements for certification stated in subsection (d) of Section 16-115.

(b) An alternative retail electric supplier shall obtain verifiable authorization from a customer, in a form or manner approved by the Commission consistent with Section 2EE of the Consumer Fraud and Deceptive Business Practices Act, before the customer is switched from another supplier.

(c) No alternative retail electric supplier, or electric utility other than the electric utility in whose service area a customer is located, shall (i) enter into or employ any arrangements which have the effect of preventing a retail customer with a maximum electrical demand of less than one megawatt from having access to the services of the

electric utility in whose service area the customer is located or (ii) charge retail customers for such access. This subsection shall not be construed to prevent an arms-length agreement between a supplier and a retail customer that sets a term of service, notice period for terminating service and provisions governing early termination through a tariff or contract as allowed by Section 16-119.

(d) An alternative retail electric supplier that is certified to serve residential or small commercial retail customers shall not:

(1) deny service to a customer or group of customers nor establish any differences as to prices, terms, conditions, services, products, facilities, or in any other respect, whereby such denial or differences are based upon race, gender or income.

(2) deny service to a customer or group of customers based on locality nor establish any unreasonable difference as to prices, terms, conditions, services, products, or facilities as between localities.

(e) An alternative retail electric supplier shall comply with the following requirements with respect to the marketing, offering and provision of products or services to residential and small commercial retail customers:

(i) Any marketing materials which make statements concerning prices, terms and conditions of service shall contain information that adequately discloses the prices, terms and conditions of the products or services that the alternative retail electric supplier is offering or selling to the customer.

(ii) Before any customer is switched from another supplier, the alternative retail electric supplier shall give the customer written information that adequately discloses, in plain language, the prices, terms and conditions of the products and services being offered and sold to the customer.

(iii) An alternative retail electric supplier shall provide documentation to the Commission and to customers that substantiates any claims made by the alternative retail electric supplier regarding the technologies and fuel types used to generate the electricity offered or sold to customers.

(iv) The alternative retail electric supplier shall provide to the customer (1) itemized billing statements that describe the products and services provided to the customer and their prices, and (2) an additional statement, at least annually, that adequately discloses the average monthly prices, and the terms and conditions, of the products and services sold to the customer.

(f) An alternative retail electric supplier may limit the overall size or availability of a service offering by specifying one or more of the following: a maximum number of customers, maximum amount of electric load to be served, time period during

which the offering will be available, or other comparable limitation, but not including the geographic locations of customers within the area which the alternative retail electric supplier is certificated to serve. The alternative retail electric supplier

shall file the terms and conditions of such service offering including the applicable limitations with the Commission prior to making the service offering available to customers.

(g) Nothing in this Section shall be construed as preventing an alternative retail electric supplier, which is an affiliate of, or which contracts with, (i) an industry or trade organization or association, (ii) a membership organization or association that exists for a purpose other than the purchase of electricity, or (iii) another organization that meets criteria established in a rule adopted by the Commission, from offering through the organization or association services at prices, terms and conditions that are available solely to the members of the organization or association.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-115B new)

Sec. 16-115B. Commission oversight of services provided by alternative retail electric suppliers.

(a) The Commission shall have jurisdiction in accordance with the provisions of Article X of this Act to entertain and dispose of any complaint against any alternative retail electric supplier alleging (i) that the alternative retail electric supplier has violated or is in nonconformance with any applicable provisions of Section 16-115 through Section 16-115A; (ii) that an alternative retail electric supplier serving retail customers having maximum demands of less than one megawatt has failed to provide service in accordance with the terms of its contract or contracts with such customer or customers; (iii) that the alternative retail electric supplier has violated or is in non-conformance with the delivery services tariff of, or any of its agreements relating to delivery services with, the electric utility, municipal system, or electric cooperative providing delivery services; or (iv) that the alternative retail electric supplier has violated or failed to comply with the requirements of Sections 8-201 through 8-207, 8-301, 8-505, or 8-507 of this Act as made applicable to alternative retail electric suppliers.

(b) The Commission shall have authority, after notice and hearing held on complaint or on the Commission's own motion:

(1) To order an alternative retail electric supplier to cease and desist, or correct, any violation of or non-conformance with the provisions of Section 16-115 or 16-115A;

(2) To impose financial penalties for violations of or non-conformances with the provisions of Section 16-115 or 16-115A, not to exceed (i) \$10,000 per occurrence or (ii) \$30,000 per day for those violations or non-conformances which continue after the Commission issues a cease-and-desist order; and

(3) To alter, modify, revoke or suspend the certificate of service authority of an alternative retail electric supplier for substantial or repeated violations of or non-conformances with the provisions of Section 16-115 or 16-115A.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-116 new)

Sec. 16-116. Commission oversight of electric utilities serving retail customers outside their service areas or providing competitive, non-tariffed services.

(a) An electric utility that has a tariff on file for delivery services may, without regard to any otherwise applicable tariffs on file, provide electric power and energy to one or more retail customers located outside its service area, but only to the extent (i) such retail customer (A) is eligible for delivery services under any delivery services tariff filed with the Commission by the electric utility in whose service area the retail customer is located and (B) has either elected to take such delivery services or has paid or contracted to pay the charges specified in Sections 16-108 and 16-114, or (ii) if such retail customer is served by a municipal system or electric cooperative, the customer is eligible for delivery services under the terms and conditions for such service established by the municipal system or electric cooperative serving that customer.

(b) An electric utility may offer any competitive service to any customer or group of customers without filing contracts with or seeking approval of the Commission, notwithstanding any rule or regulation that would require such approval. The Commission shall not increase or decrease the prices, and may not alter or add to the terms and conditions for the utility's competitive services, from those agreed to by the electric utility and the customer or customers. Non-tariffed, competitive services shall not be subject to the provisions of the Electric Supplier Act or to Articles V, VII, VIII or IX of the Act, except to the extent that any provisions of such Articles are made applicable to alternative retail electric suppliers pursuant to Sections 16-115 and 16-115A, but shall be subject to the provisions of subsections (b) through (g) of Section 16-115A, and Section 16-115B to the same extent such provisions are applicable to the services provided by alternative retail electric suppliers.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-117 new)

Sec. 16-117. Commission consumer education program.

(a) The restructuring of the electricity industry will create a new electricity market with new marketers and sellers offering new goods and services, many of which the average consumer will not be able to readily evaluate. It is the intent of the General Assembly that (i) electricity consumers be provided with sufficient and reliable information so that they are able to compare and make informed selections of products and services provided in the electricity market; and (ii) mechanisms be provided to enable consumers to protect themselves from marketing practices that are unfair or abusive.

(b) The Commission shall implement and maintain a consumer education program to provide residential and small commercial retail customers with information to

help them understand their service options in a competitive electric services market, and their rights and responsibilities.

(c) The Commission shall form a working group following the enactment of this amendatory Act of 1997. This group shall consist of 5 representatives of the investor-owned electric utilities in this State, 2 of which shall be appointed by electric utilities serving over 1,000,000 retail customers in this State; 2 representatives of alternative retail electric suppliers; 3 representatives of organizations representing the interests of residential and small commercial retail customers; and the Commission.

(d) By March 1, 1999, with respect to educational materials for small commercial customers and by November 1, 2001 with respect to educational materials for residential customers, the working group appointed pursuant to this Section shall develop a package of printed educational materials which meet the requirements of subsection (e) and shall submit such package to the Commission for approval, along with recommendations for implementing this consumer education program. Such materials shall consider the needs of different types of consumers in this State, such as elderly, low-income, multilingual, minority, rural and disabled customers. The working group shall issue recommendations to the Commission on how such education program can be implemented through a variety of communication methods, including specifically mass media, distribution of printed material, public service announcements, and posting on the Internet.

(e) At a minimum, the materials constituting the consumer education program submitted to the Commission by the working group shall include concise explanations or descriptions of the following:

(1) the structure of the electric utility industry following this amendatory Act of 1997 and a glossary of basic terms;

(2) the choices available to consumers to take electric service from an alternative retail electric supplier or remain as a retail customer of an electric utility;

(3) a customer's rights, risks and responsibilities in receiving service from an alternative retail electric supplier or remaining as a retail customer of an electric utility;

(4) the legal obligations of alternative retail electric suppliers;

(5) those services that may be offered on a competitive basis in a deregulated electric services market, including services that could be packaged with the delivery of electric power and energy;

(6) services that an electric utility is required to provide pursuant to tariffed rates;

(7) the components of a bill that could be received by a customer taking delivery services;

(8) the complaint procedures set forth in Section 10-108 of this Act by which consumers may seek a redress of grievances against an electric utility or an alternative retail electric supplier and a list of phone numbers of the Commission, the Attorney General or other entities that can provide information and assistance to customers; and

(9) additional information available from the Commission upon request.

(f) Within 45 days following the submission required of the working group by subsection (d) of this Section, the Commission shall approve or disapprove the educational materials and recommendations for program implementation. The Commission shall be deemed to have approved the educational program materials and recommendations unless the Commission disapproves of any such material or recommendation within 45 days following the date of receipt.

(g) Once approved by the Commission, materials comprising the consumer education program contemplated by this Section shall be distributed as follows:

(1) Electric utilities shall mail printed educational materials specified by the working group and approved by the Commission (a) to all residential and small commercial retail customers within a reasonable period prior to the date that such customers become eligible to purchase power from alternative retail electric suppliers, such "reasonable period" to be determined by the Commission; and (b) once the applicable customer class becomes eligible to receive delivery services, to all new residential and small commercial retail customers at the time that such customers begin taking services from the electric utility.

(2) Alternative retail electric suppliers shall include such materials with all initial mailings to potential residential and small commercial retail customers but in all circumstances prior to the time by which an alternative retail electric supplier executes any agreements or contracts with such customers for the supply of electric services.

(3) Both electric utilities and alternative retail electric suppliers shall provide such materials at no charge to residential and small commercial retail customers upon request.

(4) The Commission shall make available upon request and at no charge, and shall make available to the public on the Internet through the State of Illinois World Wide Web Site:

(A) all printed educational materials developed by the working group and approved by the Commission;

(B) a list of all certified alternative retail electric suppliers serving residential and small commercial retail customers within the service territory of each electric utility;

(C) a list of alternative retail electric suppliers serving residential or small commercial retail customers which have been found in the last 3 years by the Commission pursuant to Section 10-108 to have failed to provide service in accordance with the terms of their contracts with such retail customers; and

(D) guidelines to assist customers in determining which energy supplier is most appropriate for each customer.

(h) The Commission may also adopt a uniform disclosure form which alternative retail electric suppliers would be required to complete enabling consumers to compare prices, terms and conditions offered by such suppliers.

(i) The Commission shall make available to the public staff with the ability and knowledge to respond to consumer inquiries.

(j) The costs of printing educational materials approved by the Commission pursuant to this Section shall be payable solely from funding as provided in this subsection.

Each year the General Assembly shall appropriate money to the Commission from the General Revenue Fund for the expenses of the Commission associated with this Section. The cost of the consumer education program contemplated by this Section shall not exceed the amount of such appropriation. In no event shall any electric utility, alternative retail electric supplier or customer be liable for the costs of printing consumer education program material in accordance with this Section. The obligations associated with this consumer education program shall not exceed the amounts appropriated for this program pursuant to this Section.

(k) The Commission shall study the effectiveness of the consumer education program. Such study shall include a notice and an opportunity for participation and comment by all interested and potentially affected parties. Such study shall be completed by January 31st of each year during the mandatory transition period and a summary thereof, together with any legislative recommendations, shall be included in the Commission's Annual Report due in accordance with Section 4-304 of this Act.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-118 new)

Sec. 16-118. Services provided by electric utilities to alternative retail electric suppliers.

(a) It is in the best interest of Illinois energy consumers to promote fair and open competition in the provision of electric power and energy and to prevent anti-competitive practices in the provision of electric power and energy. Therefore, to the

extent an electric utility provides electric power and energy or delivery services to alternative retail electric suppliers and such services are not subject to the jurisdiction of the Federal Energy Regulatory Commission, and are not competitive services, they shall be provided through tariffs that are filed with the Commission, pursuant to Article IX of this Act. Each electric utility shall permit alternative retail electric suppliers to

interconnect facilities to those owned by the utility provided they meet established standards for such interconnection, and may provide standby or other services to alternative retail electric suppliers. The alternative retail electric supplier shall sign a contract setting forth the prices, terms and conditions for interconnection with the electric utility and the prices, terms and conditions for services provided by the electric utility to the alternative retail electric supplier in connection with the delivery by the electric utility of electric power and energy supplied by the alternative retail electric supplier.

(b) An electric utility shall file a tariff pursuant to Article IX of the Act that would allow alternative retail electric suppliers or electric utilities other than the electric utility in whose service area retail customers are located to issue single bills to the retail customers for both the services provided by such alternative retail electric supplier or other electric utility and the delivery services provided by the electric utility to such customers. The tariff filed pursuant to this subsection shall (i) require partial payments made by retail customers to be credited first to the electric utility's tariffed services, (ii) impose commercially reasonable terms with respect to credit and collection, including requests for deposits, (iii) retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services, in the same manner that it would be permitted to if it had billed for the services itself, and (iv) require the alternative retail electric supplier or other electric utility that elects the billing option provided by this tariff to include on each bill to retail customers an identification of the electric utility providing the delivery services and a listing of the charges applicable to such services. The tariff filed pursuant to this subsection may also include other just and reasonable terms and conditions. In addition, an electric utility, an alternative retail electric supplier or electric utility other than the electric utility in whose service area the customer is located, and a customer served by such alternative retail electric supplier or other electric utility, may enter into an agreement pursuant to which the alternative retail electric supplier or other electric utility pays the charges specified in Section 16-108, or other customer-related charges, including taxes and fees, in lieu of such charges being recovered by the electric utility directly from the customer.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-119 new)

Sec. 16-119. Switching suppliers. An electric utility or an alternative retail electric supplier may establish a term of service, notice period for terminating service and provisions governing early termination through a tariff or contract. A customer may change its supplier subject to tariff or contract terms and conditions. Any notice provisions; or provision for a fee, charge or penalty with early termination of a contract; shall be conspicuously disclosed in any tariff or contract. A customer shall remain responsible for any unpaid charges owed to an electric utility or alternative retail electric supplier at the time it switches to another provider.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-119A new)

Sec. 16-119A. Functional separation.

(a) Within 90 days after the effective date of this amendatory Act of 1997, the Commission shall open a rulemaking proceeding to establish standards of conduct for every electric utility described in subsection (b). To create efficient competition between suppliers of generating services and sellers of such services at retail and wholesale, the rules shall allow all customers of a public utility that distributes electric power and energy to purchase electric power and energy from the supplier of their choice in accordance with the provisions of Section 16-104. In addition, the rules shall address relations between providers of any 2 services described in subsection (b) to prevent undue discrimination and promote efficient competition. Provided, however, that a proposed rule shall not be published prior to May 15, 1999.

(b) The Commission shall also have the authority to investigate the need for, and adopt rules requiring, functional separation between the generation services and the delivery services of those electric utilities whose principal service area is in Illinois as necessary to meet the objective of creating efficient competition between suppliers of generating services and sellers of such services at retail and wholesale. After January 1, 2003, the Commission shall also have the authority to investigate the need for, and adopt rules requiring, functional separation between an electric utility's competitive and non-competitive services.

(c) In establishing or considering the need for rules under subsections (a) and (b), the Commission shall take into account the effects on the cost and reliability of service and the obligation of the utility to provide bundled service under this Act. The Commission shall adopt rules that are a cost effective means to ensure compliance with this Section.

(d) Nothing in this Section shall be construed as imposing any requirements or obligations that are in conflict with federal law.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-120 new)

Sec. 16-120. Development of competitive market; Commission study and reports; investigation.

(a) On or before December 31, 1999 and once every 3 years thereafter, the Commission shall monitor and analyze patterns of entry and exit, applications for entry and exit, and any barriers to entry or participation that may exist, for services provided under this Article; shall analyze any impediments to the establishment of a fully competitive energy and power market in Illinois; and shall include its findings together with appropriate recommendations for legislative action in a report to the General Assembly.

(b) Beginning in 2001, and ending in 2006, the Commission shall prepare an annual report regarding the development of electricity markets in Illinois which shall be filed by April 1 of each year with the Joint Committee on Legislative Support Services of the General Assembly and the Governor and which shall be publicly available. Such report shall include, at a minimum, the following information:

- (1) the aggregate annual peak demand of retail customers in the State of Illinois in the preceding calendar year;
- (2) the total annual kilowatt-hours delivered and sold to retail customers in the State of Illinois by each electric utility within its own service territory, each electric utility outside its service territory, and alternative retail electric suppliers in the preceding calendar year;
- (3) the percentage of the total kilowatt-hours delivered and sold to retail customers in the State of Illinois in the preceding calendar year by each electric utility within its service territory, each electric utility outside its service territory, and each alternative retail electric supplier; and
- (4) any other information the Commission considers significant in assessing the development of Illinois electricity markets, which may include, to the extent available, information similar to that described in items 1, 2 and 3 with respect to cogeneration, self-generation and other sources of electric power and energy provided to customers that do not take delivery services or bundled electric utility services.

The Commission may also include such other information as it deems to be necessary or beneficial in describing or explaining the results of its Report. The Report required by this Section shall be adopted by a vote of the full Commission prior to filing. Proprietary or confidential information shall not be disclosed publicly. Nothing contained in this Section shall prohibit the Commission from taking actions that would otherwise be allowed under this Act.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-121 new)

Sec. 16-121. Non-discrimination; adoption of rules and regulations. The Commission shall adopt rules and regulations no later than 180 days after the effective date of this amendatory Act of 1997 governing the relationship between the electric utility and its affiliates, and ensuring non-discrimination in services provided to the utility's affiliate and any alternative retail electric supplier, including without limitation, cost allocation, cross-subsidization and information sharing.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-122 new)

Sec. 16-122. Customer information.

(a) Upon the request of a retail customer, or a person who presents verifiable authorization and is acting as the customer's agent, and payment of a reasonable fee, electric utilities shall provide to the customer or its authorized agent the customer's billing and usage data.

(b) Upon request from any alternative retail electric supplier and payment of a reasonable fee, an electric utility serving retail customers in its service area shall make available generic information concerning the usage, load shape curve or other general characteristics of customers by rate classification. Provided however, no customer specific billing, usage or load shape data shall be provided under this subsection unless authorization to provide such information is provided by the customer pursuant to subsection (a) of this Section.

(c) All such customer information shall be made available in a timely fashion in an electronic format, if available.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-123 new)

Sec. 16-123. Establishment of customer information centers for electric utilities and alternative retail electric suppliers. All electric utilities and alternative retail electric suppliers shall be required to maintain a customer call center where customers can reach a representative and receive current information. Customers shall periodically be notified on how to reach the call center. The Commission shall have the authority to establish reporting requirements for such centers.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-124 new)

Sec. 16-124. Metering for residential and small commercial retail customers. An electric utility shall not require a residential or small commercial retail customer to take additional metering or metering capability as a condition of taking delivery services unless the Commission finds, after notice and hearing, that additional metering or metering capability is required to meet reliability requirements. Alternative retail electric suppliers serving such customers may provide such additional metering or metering capability at their own expense or take such additional metering or metering capability from the utility as a tariffed service. Any additional metering requirements shall be imposed in a nondiscriminatory manner. Nothing in this subsection shall be construed to prevent the normal maintenance, replacement or upgrade of meters as required to comply with Commission rules.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-125 new)

Sec. 16-125. Transmission and distribution reliability requirements.

(a) To assure the reliable delivery of electricity to all customers in this State and the effective implementation of the provisions of this Article, the Commission shall, within 180 days of the effective date of this Article, adopt rules and regulations for assessing and assuring the reliability of the transmission and distribution systems and facilities that are under the Commission's jurisdiction.

(b) These rules and regulations shall require each electric utility or alternative retail electric supplier owning, controlling, or operating transmission and distribution facilities and equipment subject to the Commission's jurisdiction, referred to in this Section as "jurisdictional entities", to adopt and implement procedures for restoring transmission and distribution services to customers after transmission or distribution outages on a non-discriminatory basis without regard to whether a customer has chosen the electric utility, an affiliate of the electric utility, or another entity as its provider of electric power and energy. These rules and regulations shall also, at a minimum, specifically require each jurisdictional entity to submit annually to the Commission.

(1) the number and duration of planned and unplanned outages during the prior year and their impacts on customers;

(2) outages that were controllable and outages that were exacerbated in scope or duration by the condition of facilities, equipment or premises or by the actions or inactions of operating personnel or agents;

(3) customer service interruptions that were due solely to the actions or inactions of an alternative retail electric supplier or a public utility in supplying power or energy;

(4) a detailed report of the age, current condition, reliability and performance of the jurisdictional entity's existing transmission and distribution facilities, which shall include, without limitation, the following data:

(i) a summary of the jurisdictional entity's outages and voltage variances reportable under the Commission's rules;

(ii) the jurisdictional entity's expenditures for transmission construction and maintenance, the ratio of those expenditures to the jurisdictional entity's transmission investment, and the average remaining depreciation lives of the entity's transmission facilities, expressed as a percentage of total depreciation lives;

(iii) the jurisdictional entity's expenditures for distribution construction and maintenance, the ratio of those expenditures to the jurisdictional entity's distribution investment, and the average remaining depreciation lives of the entity's distribution facilities, expressed as a percentage of total depreciation lives;

(iv) a customer satisfaction survey covering, among other areas identified in Commission rules, reliability, customer service, and understandability of the jurisdictional entity's services and prices; and

(v) the corresponding information, in the same format, for the previous 3 years, if available;

(5) a plan for future investment and reliability improvements for the jurisdictional entity's transmission and distribution facilities that will ensure continued reliable delivery of energy to customers and provide the delivery reliability needed for fair and open competition; and

(6) a report of the jurisdictional entity's implementation of its plan filed pursuant to subparagraph (5) for the previous reporting period.

(c) The Commission rules shall set forth the criteria that will be used to assess each jurisdictional entity's annual report and evaluate its reliability performance. Such criteria must take into account, at a minimum: the items required to be reported in subsection (b); the relevant characteristics of the area served; the age and condition of the system's equipment and facilities; good engineering practices; the costs of potential actions; and the benefits of avoiding the risks of service disruption.

(d) At least every 3 years, beginning in the year the Commission issues the rules required by subsection (a) or the following year if the rules are issued after June 1, the Commission shall assess the annual report of each jurisdictional entity and evaluate its reliability performance. The Commission's evaluation shall include specific identification of, and recommendations concerning, any potential reliability problems that it has identified as a result of its evaluation.

(e) In the event that more than 30,000 customers of an electric utility are subjected to a continuous power interruption of 4 hours or more that results in the transmission of power at less than 50% of the standard voltage, or that results in the total loss of power transmission, the utility shall be responsible for compensating customers affected by that interruption for 4 hours or more for all actual damages, which shall not include consequential damages, suffered as a result of the power interruption. The utility shall also reimburse the affected municipality, county, or other unit of local government in which the power interruption has taken place for all emergency and contingency expenses incurred by the unit of local government as a result of the interruption. A waiver of the requirements of this subsection may be granted by the Commission in instances in which the utility can show that the power interruption was a result of any one or more of the following causes:

(1) Unpreventable damage due to weather events or conditions.

(2) Customer tampering.

- (3) Unpreventable damage due to civil or international unrest or animals.

(4) Damage to utility equipment or other actions by a party other than the utility, its employees, agents, or contractors. Loss of revenue and expenses incurred in complying with this subsection may not be recovered from ratepayers.

(f) In the event of a power surge or other fluctuation that causes damage and affects more than 30,000 customers, the electric utility shall pay to affected customers the replacement value of all goods damaged as a result of the power surge or other fluctuation unless the utility can show that the power surge or other fluctuation was due to one or more of the following causes:

- (1) Unpreventable damage due to weather events or conditions.
- (2) Customer tampering.
- (3) Unpreventable damage due to civil or international unrest or animals.

(4) Damage to utility equipment or other actions by a party other than the utility, its employees, agents, or contractors. Loss of revenue and expenses incurred in complying with this subsection may not be recovered from ratepayers. Customers with respect to whom a waiver has been granted by the Commission pursuant to subparagraphs (1)-(4) of subsections (e) and (f) shall not count toward the 30,000 customers required therein.

(g) Whenever an electric utility must perform planned or routine maintenance or repairs on its equipment that will result in transmission of power at less than 50% of the standard voltage, loss of power, or power fluctuation (as defined in subsection (f)), the utility shall make reasonable efforts to notify potentially affected customers no less than 24 hours in advance of performance of the repairs or maintenance.

(h) Remedies provided for under this Section may be sought exclusively through the Illinois Commerce Commission as provided under Section 10-109 of this Act. Damages awarded under this Section for a power interruption shall be limited to actual damages, which shall not include consequential damages, and litigation costs. Damage awards may not be paid out of utility rate funds.

(i) The provisions of this Section shall not in any way diminish or replace other civil or administrative remedies available to a customer or a class of customers.

(j) The Commission shall by rule require an electric utility to maintain service records detailing information on each instance of transmission of power at less than 50% of the standard voltage, loss of power, or power fluctuation (as defined in subsection (f)), that affects 10 or more customers. Occurrences that are momentary shall not be required to be recorded or reported. The service record shall include, for each occurrence, the following information:

- (1) The date.
- (2) The time of occurrence.

- (3) The duration of the incident.
- (4) The number of customers affected.
- (5) A description of the cause.
- (6) The geographic area affected.
- (7) The specific equipment involved in the fluctuation or interruption.
- (8) A description of measures taken to restore service.
- (9) A description of measures taken to remedy the cause of the power interruption or fluctuation.
- (10) A description of measures taken to prevent future occurrence.
- (11) The amount of remuneration, if any, paid to affected customers.
- (12) A statement of whether the fixed charge was waived for affected customers.

Copies of the records containing this information shall be available for public inspection at the utility's offices, and copies thereof may be obtained upon payment of a fee not exceeding the reasonable cost of reproduction. A copy of each record shall be filed with the Commission and shall be available for public inspection. Copies of the records may be obtained upon payment of a fee not exceeding the reasonable cost of reproduction.

(k) The requirements of subsections (e) through (j) of this Section shall apply only to an electric public utility having 1,000,000 or more customers.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-125A new)

Sec. 16-125A. Consolidated billing provision for established intergovernmental agreement participants.

(a) The tariffs of each electric utility serving at least 1,000,000 customers shall permit governmental customers acting through an intergovernmental agreement that was in effect 30 days prior to the date specified in subsection (b) and which provides for these governmental customers to work cooperatively in the purchase of electric energy to aggregate their monthly kilowatt-hour energy usage and monthly kilowatt billing demand.

(b) In implementing the provisions of this Section, the rates and charges applicable under the combined billing tariff of the serving utility in effect on May 1, 1997 shall apply to all load of eligible government customers selected by the governmental customers including, but not limited to, load served under contract.

(c) For purposes of this Section, "governmental customers" shall mean any customer that is a municipality, municipal corporation, unit of local government, park district, school district, community college district, forest preserve district, special district, public corporation, body politic and corporate, sanitary or water reclamation district, or other local government agencies, including any entity created by intergovernmental agreement among any of the foregoing entities to implement the arrangements permitted by subsections (a) and (b) of this Section.

(d) Electric utilities shall file tariffs that comply with the requirements of this Section within 60 days after the effective date of this amendatory Act of 1997.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-126 new)

Sec. 16-126. Membership in an independent system operator.

(a) The General Assembly finds that the establishment of one or more independent system operators or their functional equivalents is required to facilitate the development of an open and efficient marketplace for electric power and energy to the benefit of Illinois consumers. Therefore, each Illinois electric utility owning or controlling transmission facilities or providing transmission services in Illinois and that is a member of the Mid-American Interconnected Network as of the effective date of this amendatory Act of 1997 shall submit for approval to the Federal Energy Regulatory Commission an application for establishing or joining an independent system operator that shall:

- (1) independently manage and control transmission facilities of any electric utility;
- (2) provide for nondiscriminatory access to and use of the transmission system for buyers and sellers of electricity;
- (3) direct the transmission activities of the control area operators;
- (4) coordinate, plan, and order the installation of new transmission facilities;
- (5) adopt inspection, maintenance, repair, and replacement standards for the transmission facilities under its control and direct maintenance, repair, and replacement of all facilities under its control; and
- (6) implement procedures and act to assure the provision of adequate and reliable service.

These standards shall be consistent with reliability criteria no less stringent than those established by the Mid-American Interconnected Network and the North American Electric Reliability Council or their successors.

(b) The requirements of this Section may be met by joining or establishing a regional independent system operator that meets the criteria enumerated in subsections (a), (c), and (d) of this Section, as determined by the Commission. To achieve the objectives set forth in subsection (a), the State of Illinois, through the appropriate officers, departments, and agencies, shall work cooperatively with the appropriate officials and agencies of those States contiguous to this State and the Federal Energy Regulatory Commission towards the formation of one or more regional independent system operators.

(c) The independent system operator's governance structure must be fair and non-discriminatory, and the independent system operator must be independent of any one market participant or class of participants. The independent system operator's rules of governance must prevent control, or the appearance of control, of decision-making by any class of participants.

(d) Participants in the independent system operator shall make available to the independent system operator all information required by the independent system operator in performance of its functions described herein. The independent system operator and the electric utilities participating in the independent system operator shall make all filings required by the Federal Energy Regulatory Commission. The independent system operator shall ensure that additional filings at the Federal Energy Regulatory Commission request confirmation of the relevant provisions of this amendatory Act of 1997.

(e) If a spot market, exchange market, or other market-based mechanism providing transparent real-time market prices for electric power has not been developed, the independent system operator or a closely cooperating agent of the independent system operator may provide an efficient competitive power exchange auction for electric power and energy, open on a nondiscriminatory basis to all suppliers, which meets the loads of all auction customers at efficient prices.

(f) For those electric utilities referred to in subsection (a) which have not filed with the Federal Energy Regulatory Commission by June 30, 1998 an application for establishment or participation in an independent system operator or if such application has not been approved by the Federal Energy Regulatory Commission by March 31, 1999, a 5 member Oversight Board shall be formed. The Oversight Board shall (1) oversee the creation of an Illinois independent system operator and (2) determine the composition and initial terms of service of, and appoint the initial members of, the Illinois independent system operator board of directors. The Oversight Board shall consist of the following: (1) 3 persons appointed by the Governor; (2) one person appointed by the Speaker of the House of Representatives; and (3) one person appointed by the President of the Senate. The Oversight Board shall take the steps that are necessary to ensure the earliest possible incorporation of an Illinois independent system operator under the Business Corporation Act of 1983, and shall serve until the Illinois independent system operator is incorporated.

(g) After notice and hearing, the Commission shall require each electric utility referred to in subsection (a), that is not participating in an independent system operator meeting the requirements of subsections (a) and (c), to seek authority from the Federal Energy Regulatory Commission to transfer functional control of transmission facilities to the Illinois independent system operator for control by the Illinois independent system

operator consistent with the requirements of subsection (a). Upon approval by the Federal Energy Regulatory Commission, electric utilities may also elect to transfer ownership of transmission facilities to the Illinois independent system operator. Nothing in this Act shall be deemed to preclude the Illinois independent system operator from (1) seeking authority, as necessary, to merge with or otherwise combine its operations with those of one or more other entities authorized to provide transmission services, (2) purchasing or leasing transmission assets from transmission-owning entities not required by this Section to lease transmission facilities to the Illinois independent system operator, or (3) operating as a transmission public utility under the Federal Power Act.

(h) Any other owner of transmission facilities in Illinois not required by this Section to participate in an independent system operator shall be permitted, but not required, to become a member of the Illinois independent system operator.

(i) The Illinois independent system operator created under this Section, and any other independent system operator authorized by the Federal Energy Regulatory Commission to provide transmission services as a public utility under the Federal Power Act within the State of Illinois, shall be deemed to be a public utility for purposes of Section 8-503 and 8-509 of this Act.

(j) Electric utilities referred to in subsection (a) may withdraw from the Illinois independent system operator upon becoming a member of an independent system operator or operators conforming with the criteria in subsections (a) and (c) and whose formation and operation has been approved by the Federal Energy Regulatory Commission. This subsection does not relieve any electric utility of any obligations under Federal law.

(k) Nothing in this Section shall be construed as imposing any requirements or obligations that are in conflict with federal law.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-127)

Sec. 16-127. Environmental disclosure.

(a) Effective January 1, 1999, every electric utility and alternative retail electric supplier shall provide the following information, to the maximum extent practicable, with its bills to its customers on a quarterly basis:

(i) the known sources of electricity supplied, broken-out by percentages, of biomass power, coal-fired power, hydro power, natural gas-fired power, nuclear power, oil-fired power, solar power, wind power and other resources, respectively; and

(ii) a pie-chart which graphically depicts the percentages of the sources of the electricity supplied as set forth in subparagraph (i) of this subsection.

(b) In addition, every electric utility and alternative retail electric supplier shall provide, to the maximum extent practicable, with its bills to its customers on a quarterly basis, a standardized chart in a format to be determined by the Commission in a rule following notice and hearings which provides the amounts of carbon dioxide, nitrogen oxides and sulfur dioxide emissions and nuclear waste attributable to the known sources of electricity supplied as set forth in subparagraph (i) of subsection (a) of this Section.

(c) The electric utilities and alternative retail electric suppliers may provide their customers with such other information as they believe relevant to the information required in subsections (a) and (b) of this Section.

(d) For the purposes of subsection (a) of this Section, "biomass" means dedicated crops grown for energy production and organic wastes.

(e) All of the information provided in subsections (a) and (b) of this Section shall be presented to the Commission for inclusion in its World Wide Web Site.

(Source: P.A. 90-624, effective July 10, 1998)

(220 ILCS 5/16-128 new)

Sec. 16-128. Provisions related to utility employees during the mandatory transition period.

(a) The General Assembly finds:

(1) The reliability and safety of the electric system has depended on a workforce of skilled and dedicated employees, equipped with technical training and experience.

(2) The integrity and reliability of the system has also depended on the industry's commitment to invest in regular inspection and maintenance, to assure that it can withstand the demands of heavy service requirements and emergency situations.

(3) It is in the State's interest to protect the interests of utility employees who have dedicated themselves to assuring reliable service to the citizens of this State, and who might otherwise be economically displaced in a restructured industry.

The General Assembly further finds that it is necessary to assure that employees operating in the deregulated industry have the requisite skills, knowledge, and competence to provide reliable and safe electrical service and therefore that alternative retail electric suppliers shall be required to demonstrate the competence of their employees to work in the industry.

The knowledge, skill, and competence levels to be demonstrated shall be consistent with those generally required of or by the electric utilities in this State with respect to their employees.

Adequate demonstration of requisite knowledge, skill and competence, shall include such factors as completion by the employee of an accredited or otherwise recognized apprenticeship program for the particular craft, trade or skill, or specified years of employment with an electric utility performing a particular work function.

To implement this requirement, the Commission, in determining that an applicant meets the standards for certification as an alternative retail electric supplier, shall require the applicant to demonstrate (i) that the applicant is licensed to do business, and bonded, in the State of Illinois; and (ii) that the employees of the applicant that will be installing, operating, and maintaining generation, transmission, or distribution facilities within this State, or any entity with which the applicant has contracted to perform those functions within this State, have the requisite knowledge, skills, and competence to perform those functions in a safe and responsible manner in order to provide safe and reliable service, in accordance with the criteria stated above.

(b) The General Assembly finds, based on experience in other industries that have undergone similar transitions, that the introduction of competition into the State's electric utility industry may result in workforce reductions by electric utilities which may adversely affect persons who have been employed by this State's electric utilities in functions important to the public convenience and welfare. The General Assembly further finds that the impacts on employees and their communities of any necessary reductions in the utility workforce directly caused by this restructuring of the electric industry shall be mitigated to the extent practicable through such means as offers of voluntary severance, retraining, early retirement, outplacement and related benefits. Therefore, before any such reduction in the workforce during the transition period, an electric utility shall present to its employees or their representatives a workforce reduction plan outlining the means by which the electric utility intends to mitigate the impact of such workforce reduction on its employees.

(c) In the event of a sale, purchase, or any other transfer of ownership during the mandatory transition period of one or more Illinois divisions or business units, and/or generating stations or generating units, of an electric utility, the electric utility's contract and/or agreements with the acquiring entity or persons shall require that the entity or persons hire a sufficient number of non-supervisory employees to operate and maintain the station, division or unit by initially making offers of employment to the non-supervisory workforce of the electric utility's division, business unit, generating station and/or generating unit at no less than the wage rates, and substantially equivalent fringe benefits and terms and conditions of employment that are in effect at the time of transfer of ownership of said division, business unit, generating station, and/or generating units; and said wage rates and substantially equivalent fringe benefits and terms and conditions of employment shall continue for at least 30 months from the time of said transfer of ownership unless the parties mutually agree to different terms and conditions of employment within that 30-month period. The utility shall offer a transition plan to those employees who are not offered jobs by the acquiring entity because that entity has a need for fewer workers. If there is litigation concerning the sale, or other transfer of ownership of the electric utility's divisions, business units, generating station, or

generating units, the 30-month period will begin on the date the acquiring entity or persons take control or management of the divisions, business units, generating station or generating units of the electric utility.

(d) If a utility transfers ownership during the mandatory transition period of one or more Illinois divisions, business units, generating stations or generating units of an electric utility to a majority-owned subsidiary, that subsidiary shall continue to employ the utility's employees who were employed by the utility at such division, business unit or generating station at the time of the transfer under the same terms and conditions of employment as those employees enjoyed at the time of the transfer. If ownership of the subsidiary is subsequently sold or transferred to a third party during the transition period, the transition provisions outlined in subsection (c) shall apply.

(e) The plant transfer provisions set forth above shall not apply to any generating station which was the subject of a sales agreement entered into before January 1, 1997.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-129 new)

Sec. 16-129. Existing contracts not affected. Nothing in this Article XVI shall affect the right of an electric utility to continue to provide, or the right of the customer to continue to receive, service pursuant to a contract for electric service between the electric utility and the customer, in accordance with the prices, terms and conditions provided for in that contract. Either the electric utility or the customer may require compliance with the prices, terms and conditions of such contract.

(Source: P.A. 90-561, effective December 16, 1997)

(220 ILCS 5/16-130 new)

Sec. 16-130. Annual Reports. The General Assembly finds that it is necessary to have reliable and accurate information regarding the transition to a competitive electric industry. In addition to the annual report requirements pursuant to Section 5-109 of this Act, each electric utility shall file with the Commission a report on the following topics in accordance with the schedule set forth in subsection (b) of this Section:

(1) Data on each customer class of the electric utility in which delivery services have been elected including:

(A) number of retail customers in each class that have elected delivery service;

(B) kilowatt hours consumed by the customers described in subparagraph (A);

(C) revenue loss experienced by the utility as a result of customers electing delivery services or market-based prices as compared to continued service under otherwise applicable tariffed rates;

(D) total amount of funds collected from each customer class pursuant to the transition charges authorized in Section 16-108;

(E) Such other information as the Commission may by rule require.

(2) A description of any steps taken by the electric utility to mitigate and reduce its costs, including both a detailed description of steps taken during the preceding calendar year and a summary of steps taken since the effective date of this amendatory Act of 1997, and including, to the extent practicable, quantification of the costs mitigated or reduced by specific actions taken by the electric utility.

(3) A description of actions taken under Sections 5-104, 7-204, 9-220, and 16-111 of this Act. This information shall include but not be limited to:

(A) a description of the actions taken;

(B) the effective date of the action;

(C) the annual savings or additional charges realized by customers from actions taken, by customer class and total for each year;

(D) the accumulated impact on customers by customer class and total; and

(E) a summary of the method used to quantify the impact on customers.

(4) A summary of the electric utility's use of transitional funding instruments, including a description of the electric utility's use of the proceeds of any transitional funding instruments it has issued in accordance with Article XVIII of this Act.

(5) Kilowatt-hours consumed in the twelve months ending December 31, 1996 (which kilowatt-hours are hereby referred to as "base year sales") by customer class multiplied by the revenue per kilowatt hour, adjusted to remove charges added to customers bills pursuant to Sections 9-221 and 9-222 of this Act, during the twelve months ending December 31, 1996, adjusted for the reductions required by subsection (b) of Section 16-111 and the mitigation factors contained in Section 16-102. This amount shall be stated for: (i) each calendar year preceding the year in which a report is required to be submitted pursuant to subsection (b); and (ii) as a cumulative total of all calendar years beginning with 1998 and ending with the calendar year preceding the year in which a report is required to be submitted pursuant to subsection (b).

(6) Calculations identical to those required by subparagraph (5) except that base year sales shall be adjusted for growth in the electric utility's service

territory, in addition to the other adjustments specified by the first sentence of sub-paragraph (5).

(7) the electric utility's total revenue and net income for each calendar year beginning with 1997 through the calendar year preceding the year in which a report is required to be submitted pursuant to subsection (b) as reported in the electric utility's Form 1 report to the Federal Energy Regulatory Commission.

(8) any consideration in excess of the net book cost as of the effective date of this amendatory Act of 1997 received by the electric utility during the year from a sale made subsequent to the effective date of this amendatory Act of 1997 to a non-affiliated third party of any generating plant that was owned by the electric utility on the effective date of this amendatory Act of 1997.

(9) any consideration received by the electric utility from sales or transfers during the year to an affiliated interest of generating plant, or other plant that represents an investment of \$25,000,000 or more in terms of total depreciated original cost, which generating or other plant were owned by the electric utility prior to the effective date of this amendatory Act of 1997.

(10) any consideration received by an affiliated interest of an electric utility from sales or transfers during the year to a non-affiliated third party of generating plant, but only if: (i) the electric utility had previously sold or transferred such plant to the affiliated interest subsequent to the effective date of this amendatory Act of 1997; (ii) the affiliated interest sells or transfers such plant to a non-affiliated third party prior to December 31, 2006; and (iii) the affiliated interest receives consideration for the sale or transfer of such plant to the non-affiliated third party in an amount greater than the cost or price at which such plant was sold or transferred to the affiliated interest by the electric utility.

(b) The information required by subsection (a) shall be filed by each electric utility on or before March 1 of each year 1999 through 2007 or through such additional years as the electric utility is collecting transition charges pursuant to subsection (f) of Section 16-108, for the previous calendar year. The information required by subparagraph (6) of subsection (a) for calendar year 1997 shall be submitted by the electric utility on or before March 1, 1999.

(c) On or before May 15 of each year 1999 through 2006 or through such additional years as the electric utility is collecting transition charges pursuant to subsection (f) of Section 16-108, the Commission shall submit a report to the General Assembly which summarizes the information provided by each electric utility under this Section; provided, however, that proprietary or confidential information shall not be publicly disclosed.